



**CITY OF NEWPORT
PLANNING COMMISSION MEETING
NEWPORT CITY HALL
SEPTEMBER 10, 2015 – 6:00 P.M.**

Chairperson:	Anthony Mahmood	City Administrator:	Deb Hill
Vice-Chair:	Kevin Haley	Executive Analyst:	Renee Eisenbeisz
Commissioner:	Matt Prestegaard	Planner:	Sherri Buss
Commissioner:	Marvin Taylor	Council Liaison:	Tom Ingemann
Commissioner:	David Tweeten		

AGENDA

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF PLANNING COMMISSION MINUTES

A. Planning Commission Minutes of August 13, 2015

4. APPOINTMENTS WITH COMMISSION

A. **Public Hearing** – To consider a Request from Richard Dougherty for an Amendment to a Conditional Use Permit for Property Located at 2193 3rd Avenue

1. Memo from Sherri Buss
2. Resolution No. 2015-9

B. Discussion Regarding Proposed Amendments to Section 1380, Signs

5. COMMISSION & STAFF REPORTS

6. NEW BUSINESS

7. ANNOUNCEMENTS

A. Upcoming Meetings and Events:

- | | | |
|--------------------------------|--------------------|-----------|
| 1. City Council Meeting | September 17, 2015 | 5:30 p.m. |
| 2. Park Board Meeting | September 24, 2015 | 6:30 p.m. |
| 3. City Council Meeting | October 1, 2015 | 5:30 p.m. |
| 4. Planning Commission Meeting | October 8, 2015 | 6:00 p.m. |

8. ADJOURNMENT



**City of Newport
Planning Commission Minutes
August 13, 2015**

1. CALL TO ORDER

Chairperson Mahmood called the meeting to order at 6:00 P.M.

2. ROLL CALL -

Commissioners present – Anthony Mahmood, Kevin Haley, Matt Prestegaard ,Marvin Taylor, David Tweeten

Commissioners absent –

Also present –Renee Eisenbeisz, Executive Analyst; Sherri Buss, TKDA Planner; Tom Ingemann, Council Liaison

3. APPROVAL OF PLANNING COMMISSION MINUTES

A. Planning Commission Minutes of July 13, 2015

Chairperson Mahmood - I have some minor grammar changes that I'll give you after the meeting.

Motion by Haley, seconded by Tweeten, to approve the July 13, 2015 minutes as amended. With 5 Ayes, 0 Nays, the motion carried.

4. APPOINTMENTS WITH COMMISSION

A. Public Hearing – To consider a Request from Husnik Meats for a Conditional Use Permit for Property Located at 94 21st Street

Sherri Buss, TKDA Planner, presented on this item as outlined in the July 13, 2015 Planning Commission packet.

The Public Hearing opened at 6:12 p.m.

Joe Murphy, Husnik Meats - I would like to thank everyone for taking this into consideration. My business has expanded dramatically over the last few years and that's why I need a new space. I want to separate the production from the retail. We may add a second shift eventually. We are USDA inspected so we need to have our first shift be 6:00 a.m. - 2:30 p.m. I wrote 5:00 because of clean-up. The second shift would go from 2:30 - 11:00 p.m. That would be four to six employees if it is added. Everything is pretty quiet. We've never had any issues with South St. Paul.

Vice-Chair Haley - I don't have any issues with time and understand that you don't have any issues with smell. It's covered in the conditions that we'll need to address it if it does become an issue.

Mr. Murphy - Our smoke rooms are computer controlled so the smoke stays inside and it'll disappear within minute if I open it.

David Tweeten - What kind of zoning are you coming from in South St. Paul?

Mr. Murphy - I'm not sure, I think it's mixed-use, there's houses around us.

Marvin Taylor - I've personally been there multiple times and have never noticed a smell. The only thing I have is in regards to parking and screening vehicles. I know at your current place, you have a couple vehicles that are there regularly.

Vice-Chair Haley - If they have a box truck, there's no where to park it with screening. Right now, there's two semi-trailers at that location and they are there all the time. I think we should allow them to park commercial vehicles more than 48 hours.

Ms. Buss - The concern would come from residential areas.

Executive Analyst Eisenbeisz - The parking is facing Aggregate Industries, not residential properties.

Ms. Buss - We can change it so that commercial vehicles serving the business can be parked without screening.

David Tweeten - Are there any future plans or desires to improve the appearance of the place? It would be unfortunate if they felt constrained to put in improvements because it's non-conforming.

Ms. Buss - They can make improvements are expand up to 20%.

David Tweeten - What about the parking lot or landscaping?

Ms. Buss - They can make changes. They might just have to do some stormwater management if they expand the parking lot.

David Tweeten - Does changes to the parking lot endanger the zoning?

Ms. Buss - No. They could probably reduce it and still meet our requirements. If they can show that they don't need all of that parking, we can grant them some flexibility, especially since it's in the MX-3 District.

David Tweeten - Do they have to walk a fine line if they want to put up trees in the front?

Ms. Buss - No, there wouldn't be an issue with that.

Vice-Chair Haley - They'll always be a legal non-conforming building.

Ms. Buss - Yes, they can only lose that if they expand by more than 20% or the building is torn down.

Vice-Chair Haley - The CUP stays with the property as long as it's occupied?

Ms. Buss - Yes. If they cease operations for more than a year, then they would lose it.

The Public Hearing closed at 6:21 p.m.

Motion by Prestegaard, seconded by Haley, to approve Resolution No. 2015-8 as amended. With 5 Ayes, 0 Nays, the motion carried.

5. COMMISSION AND STAFF REPORTS

6. NEW BUSINESS

Vice-Chair Haley - Pioneer Day was great, it was another success.

Ms. Buss - You might be interested to know that there are new people interested in that Reiling property on Catherine Drive.

Vice-Chair Haley - The City has 20 acres and there's another parcel that's 32.

7. ANNOUNCEMENTS

A. Upcoming Meetings and Events:

- | | | |
|--------------------------------------|--------------------|-----------|
| 1. City Council Meeting | August 20, 2015 | 5:30 p.m. |
| 2. City Council Meeting | September 3, 2015 | 5:30 p.m. |
| 3. City Offices Closed for Labor Day | September 7, 2015 | |
| 4. Planning Commission Meeting | September 10, 2015 | 6:00 p.m. |

8. ADJOURNMENT

Motion by Haley, seconded by Prestegaard, to adjourn the Planning Commission Meeting at 6:25 p.m. With 5 Ayes, 0 Nays, the motion carried.

Signed: _____
Anthony Mahmood, Chairperson

Respectfully submitted,

Renee Eisenbeisz
Executive Analyst



444 Cedar Street, Suite 1500
Saint Paul, MN 55101
651.292.4400
tkda.com

Memorandum

To:	Newport Planning Commission	Reference:	2193 3 rd Avenue CUP—Car Specialty Services
Copies To:	Deb Hill, City Administrator		
	Renee Eisenbeisz, Executive Analyst		
	Richard Dougherty, Applicant		
	Blue River Properties, LLP, Owner	Project No.:	15742.005
From:	Sherri Buss, RLA AICP, City Planner	Routing:	
Date:	September 1, 2015		

SUBJECT: 2193 3rd Avenue
Application for a Conditional Use Permit (CUP)

MEETING DATE: September 10, 2015

LOCATION: 2193 3rd Avenue

APPLICANT: Richard Dougherty
9548 66th Street Court South
Cottage Grove, MN 55016

CURRENT ZONING: MX-3 (Transit-Oriented Mixed Use)

60-DAY PERIOD: September 12, 2015

ITEMS REVIEWED: Application submitted on August 12, 2015, existing CUP

BRIEF DESCRIPTION OF THE REQUEST

The applicant, Richard Dougherty, has submitted an application for an amended Conditional Use Permit (CUP) to add the Automotive Services/Car Specialty Services Use to the use currently permitted at 2193 3rd Avenue. The existing use permitted on the property is Auto Repair, which does not include painting. The site is in the MX-3 District. The proposed use is permitted in the MX-3 District with a CUP.

BACKGROUND

The City received a complaint that automobile painting was occurring at the business at 2193 3rd Avenue. The current CUP for the property permits Auto Repair. The definition of Motor Vehicle Repair in the zoning ordinance specifically excludes auto painting. The CUP for the Auto Repair use was issued to a previous business at the property in January 2002. The Auto Repair use is no longer permitted in the MX-3 District, but this use is a legal non-conforming use on this site based on the existing CUP, and may be continued on that basis.

The applicant described his business to City staff, noting that he provides a specialty service to car dealers to address minor damage to new vehicles. The business is called Premier Painting and Detail. The specific work includes auto detailing; sanding, buffing, and touch ups of dents or scrapes, and a minor amount of painting to complete repairs to dents. He does not use a compressor or other noisy equipment, and there is no welding involved in the repairs. Based on the description of the activities, the Planner suggested that the "Automotive Services/Car Specialty Services" use in the ordinance fits this use, which is intended to include specialty services such as detailing and does not include activities such as body repair or major repairs.

The applicant is requesting an amendment to the existing Conditional Use Permit (CUP) to add the Automotive Services/Car Specialty Services use to the use permitted at the site, so that the limited amount of painting that is involved in the repair services may be permitted as part of the service provided at the site. The conditions from the existing CUP will become conditions for the amended CUP.

The existing site includes a building that is approximately 9,000 square feet in size. The total site area includes 3 parcels and .35 acres 0.70 acres (15,250 square feet). The site has existing driveways and a parking area. The business will use the existing building and site, and does not plan to expand the building or change the parking lot.

EVALUATION OF THE REQUEST:

1. Zoning District and CUP Standards

The MX-3 District is intended to include a mixture of residential, commercial, office and civic uses at urban densities that support transit use. The district regulations permit some automotive repair and specialty services, with a conditional use permit, so that conditions may be included to address potential impacts to adjacent residential uses.

Section 1310.10 of the code indicates that the city may grant a CUP when the use is consistent with the Zoning Ordinance and Comprehensive Plan, and the City may impose conditions and safeguards to protect the health, safety and welfare of the community. Criteria for evaluating the proposed uses and developing conditions for the CUP include the following:

1. The proposed use is designated in Section 1330 of the development code as a conditional use in the appropriate zoning district.
2. The proposed use is consistent with the Newport Comprehensive Plan.
3. The proposed use will not be detrimental to or endanger the public health, safety or general welfare of the City, including the factors of noise, glare, odor, electrical



interference, vibration, dust, and other nuisances; fire and safety hazards; existing and anticipated traffic conditions and parking facilities on adjacent streets and land.

4. The potential effects of the proposed use on surrounding properties, including valuation, aesthetics and scenic views, land uses, and character and integrity of the neighborhood.
5. The potential impacts of the proposed use on governmental facilities and services, including roads, sanitary sewer, water and police and fire.
6. The potential impacts on sensitive environmental features including lakes, surface and underground water supply and quality, wetlands, slopes, flood plains and soils.
7. The City may also consider whether the proposed use complies or is likely to comply in the future with all standards and requirements set out in other regulations or ordinances of the City and other governmental bodies having jurisdiction in the City.
8. In permitting a new conditional use, the City may impose additional conditions which it considers necessary to protect the best interest of the surrounding area or community as a whole.

This staff report evaluates the request for a Conditional Use Permit for the property located at 94 21st Street based on the City's zoning ordinance and related standards.

2. Proposed Use—Automotive Services/Car Specialty Services

The proposed use is permitted with a CUP in the MX-3 District. The use is consistent with the Zoning Ordinance.

3. Comprehensive Plan

The Comprehensive Plan includes goals to encourage redevelopment in the MX-3 District with a mix of commercial, retail, restaurant and entertainment uses, to strengthen commercial uses that maintain the small-town character of the city, and to expand the community's tax base and employment opportunities. The Comprehensive Plan designates the site at 2193 3rd Avenue for use as either a commercial or residential use. The proposed use is consistent with the goals, land use and zoning maps included in the 2030 Comprehensive Plan.

4. Dimensional Standards, Setbacks, and Requirements

The dimensional standards and setbacks for the MX-3 district that apply to the proposed site plan include the following:

- Minimum lot area: None
- Minimum lot depth: None
- Minimum lot width: 30 feet
- Maximum lot coverage (buildings): None
- Structure setbacks: Front yard: 0; side yard: 5 ft.; Rear yard: 20 ft.
- Parking setbacks: Front yard: 0 feet (parking is not allowed in the front yard of new buildings); side yard: 5 ft.; rear yard: 10 ft.
- Maximum building height: 40 feet
- Public utilities required, including sewer

The existing building meets the setback requirements, and the lot meets the dimensional standard in the ordinance.



5. Traffic and Roadways

The site will use the existing driveways from Unity Boulevard and 3rd Avenue for access.

The Planner asked the applicant to estimate the daily traffic to and from the site. Richard Dougherty estimated that less than five cars per day go in and out of the site. Some of the repair work occurs on-site, and the vehicles do not come to this property.

Existing roadways are adequate to handle the traffic to and from the site.

6. Parking Requirements and Driveways

Pavement and Driveways. The Zoning Ordinance requires that all parking, loading and service areas and driveways in Mixed-Use, Business and Industrial Districts be constructed of concrete, asphalt or similar durable and dustless surface that meets the City's Public Works Design Manual standards. The parking areas on the site are paved and meet the ordinance requirement.

Parking. The existing CUP includes a requirement that there will be no on-street parking. All of the parking for the business must be accommodated on the property. The Planner has included this condition in the amended CUP.

7. Building design and materials/Accessory Structures

The applicant does not plan to alter the building exterior.

8. Exterior Storage Requirements

Section 1350.13 requires that no materials, products or equipment be stored outside of an enclosed building except for daily display of merchandise during store hours. The Planner has included a proposed condition for the CUP that no outside storage is permitted on the site. The performance standard related to "outside storage" does not include vehicle storage, which is addressed in another section of the ordinance.

9. Noise, Vibration, and Related Impacts

The Zoning Ordinance requires that the emission of noxious matter (such as paint, gases, dust, etc.) and noise be controlled so that they do not impact public health, safety, welfare or cause damage to property. Noise impacts may not exceed the Minnesota Pollution Control Agency standards.

The Planner has included a condition that painting and other repairs must be completed within the building on the property, and may not include the use of compressors, welding equipment, or other equipment that creates noise that is audible to adjacent residential uses, and has included the existing CUP conditions related to noxious matter and noise and related impacts in the conditions proposed for the amended CUP.

10. Refuse and Recycling

Section 1350.13 requires that all refuse and recycling containers be stored in the principle structure or a fully enclosed accessory structure, and Section 1330.05 (Subd 10) further requires that dumpsters, trash, trash handling equipment and recycling equipment shall be



stored within an enclosed accessory structure. The Planner has included a proposed condition for the CUP that refuse and recycling for the business shall meet the ordinance requirements.

11. Screening and Fencing Requirements

The ordinance requires that any vehicles parked for more than forty-eight hours shall be completely screened from residential uses, and screened from the eye-level view of public streets and from the public front and office sides of business and industrial uses.

The description of the proposed uses does not indicate that parking of vehicles will occur for more than 48 hours. If such parking will occur on the site, the location should be screened from adjacent residential uses. The Planner has included a condition that vehicles parked for more than 48 hours must be screened from the eye-level view of adjacent residential uses.

12. Lighting

No new lighting is proposed for the use.

13. Landscaping

No new landscaping is required.

14. Hours of Operation

The hours of operation included in the current CUP are 8:00 a.m. to 6 p.m. The applicant requested that the hours be changed to 7:00 a.m. The Planner included the request in the proposed conditions.

15. Signs

The application did not include locations or plans for new signs. The conditions include a requirement that the applicant obtain any required sign permits if new signs are proposed.

16. Infrastructure, Public Services, Health and Welfare

The City Engineer reviewed the site plans and indicated that adequate sewer and water services are available to serve the proposed uses at the site.

17. Stormwater Management

No change is proposed on the site, and therefore there are no new stormwater management requirements for the proposed use.

FINDINGS FOR THE CONDITIONAL USE PERMIT REQUEST

1. The proposed use is designated in Section 1330 of the development code as a conditional use in the MX-3 Zoning District.
2. The proposed use is consistent with the Newport Comprehensive Plan, which supports the development of business and commercial uses in the MX-3 District.
3. The conditions for approval of the proposed use include requirements for development and operation of the site so that the proposed use will not be detrimental to or endanger



the public health, safety or general welfare of the City, including the potential impacts of noise, and other nuisances.

4. The proposed use will have no negative impacts governmental facilities and services, including roads, sanitary sewer, water and police and fire.
5. In permitting a new conditional use, the City has adopted conditions which it considers necessary to protect the best interest of the surrounding area or community as a whole.

The Planner finds that with proposed conditions, the request meets the ordinance requirements for a Conditional Use Permit.

ACTION REQUESTED FOR THE REZONING AND CUP REQUEST:

The Planning Commission can recommend:

1. Approval
2. Approval with conditions
3. Denial with findings
4. Table the request

PLANNING STAFF RECOMMENDATIONS:

The Planner recommends that the Planning Commission recommend approval of the request for an amended Conditional Use Permit to add the Automotive Services/Car Specialty Services to the existing CUP that permits Auto Repair on the site at 2193 3rd Avenue Street, with conditions:

1. The use of the site shall conform to the use described in the application submitted to the City on August 12, 2015 and in the Zoning Ordinance.
2. The present and existing parking lot shall not be expanded.
3. The hours of operation shall be between 7:00 a.m. to 6:00 p.m. on Monday through Friday, and 7:00 a.m. to 4:00 p.m. on Saturday.
4. Any change in off-street parking and traffic patterns shall be subject to review and approval by the city engineer. There shall be no on-street parking.
5. Vehicle repair activities and painting shall be conducted within the building on the property, Painting shall be limited to "touch ups" for minor repairs, and may not include the use of compressors, welding equipment, or other equipment that creates noise that is audible to adjacent residential uses.
6. The Applicant shall not emit, or permit the presence of emissions of noxious matter in the form of, but not limited to, gases, vapors, odor, dust, fumes (including truck exhaust), mists or any combination of these forms that is detrimental to or otherwise endangers the comfort, health or safety of the residents of the City.
7. The use of the property shall not cause or result in any excessive noise, vibration, dust, dirt, smoke, odor, noxious gases, glare or waste. The use shall meet the State of Minnesota standards for noise and air quality.



8. No outside storage is permitted on the site.
9. All trash and recycling equipment shall be stored within a closed structure.
10. Vehicles parked for more than 48 hours must be screened from the eye-level view of adjacent residential areas.
11. Any new lighting shall meet the ordinance requirements.
12. The Applicant shall apply to the City for a permit for new sign(s) proposed at the site. All signs shall meet the ordinance requirements.
13. The applicant shall pay all fees and escrow associated with this application.





Parcel ID: 2602822410027

Parcel Address:
2193 3RD AVE, CITY OF NEWPORT



**MAP FOR REFERENCE ONLY
NOT A LEGAL DOCUMENT**



City of NEWPORT Planning Request Application

Newport City Hall ♦ 596 7th Avenue ♦ Newport ♦ Minnesota ♦ 55055 ♦ Telephone 651-459-5677 ♦ Fax 651-459-9883

Application Date: August 11, 2015 Public Hearing Date _____

Applicant Information

Name: Richard Dougherty Telephone: 612 209 3058
Mailing Address: 9548 66th St Court S Telephone: _____
City/State/Zip: Cottage Grove, MN 55016

Property Owner Information

Name: Blue River Properties LLP Telephone: 612 716 8105
Mailing Address: 3725 Burgundy Dr Telephone: _____
City/State/Zip: EAGAN, MN 55122-3159

Project Information

Location of Property: 2193 3rd Ave, Newport, MN
Legal Description of Property (Must match description on the Deed) and P.I.D. #: 26.028.22.41.0026
Lots Eleven (1) Twelve (2) and Thirteen (3) Block Three 26.028.22.41.0027
(3) The Farmer's Terminal Packing Company's Addition 26.028.22.41.0025
to the village of Newport, Washington County Minnesota SEE ATTACHMENT.

Zoning District: MX-3 Flood Plain: AE 0.2% Annual Chance Flood Hazard

- Comprehensive Plan Amendment \$500 or Actual Cost plus \$50 for Additional Staff Hours (10 Hr Min)
- Rezoning \$500 plus Escrow
- Zoning Amendment \$500
- Variance \$300 plus Escrow
- Conditional Use Permit
 - Residential \$300 plus Escrow
 - Commercial \$450 plus Escrow (\$1,000)
- Subdivision Approval
 - Minor Subdivision \$300 plus Escrow and Parkland Dedication Fee
 - Major Subdivision \$500 plus Escrow, \$50 per Lot, \$200 for Final Plat, and 10% of land value or fee for Parkland Dedication Fee

Other: Automotive Services + Car Speciality Services

- Applicable Zoning Code Chapter: _____
- Review by Engineer Cost: _____
- Total Cost: _____

Escrow Fees

The City of Newport requires that any developer or every person, company, or corporation that is seeking a planning request must first submit detailed plans to the City. The person submitting the planning request must also submit prepayment to the City to cover any expenses that the City incurs by investing extensive amounts of time reviewing these plans. All unused escrow fees will be returned to the applicant upon completion of the request. Additionally, if actual costs are above the paid escrow, the applicant will be required to pay the additional amount. The fees are as follows:

Planning Request	Escrow Fee
Rezoning	\$500
Street/Alley Vacation	\$1,000
Residential Variance	\$500
Commercial Variance	\$1,000
Residential Conditional Use/Interim Use Permit	\$750
Commercial Conditional Use/Interim Use Permit	\$1,000
Preliminary Plat Under 10 Acres	\$3,500
Preliminary Plat Over 10 Acres	\$6,500
Residential Minor Subdivision, Major Subdivision, Site Plan Review, Final Plat, and Planned Unit Development:	
8 Units or Less	\$2,000
9 to 40 Units	\$3,200
41 Units or More	\$4,500
Commercial Minor Subdivision, Major Subdivision, Site Plan Review, Final Plat, and Planned Unit Development:	
0 to 5,000 Square Foot Building	\$2,000
5,001 to 10,000 Square Foot Building	\$3,000
10,001 to 50,000 Square Foot Building	\$3,750
50,000 Plus Square Foot Building	\$4,500

Typical escrow costs include reviewing the application to ensure that State Statutes and the City Codes are followed, preparing the staff report, findings, and recommended conditions for both the Planning Commission and City Council, and communicating with the applicant as needed to complete the staff report. The average fee is \$100 per hour for the Planner and \$70 per hour for the Engineer.

Present Use of Property: Automotive Speciality Services and
Auto Repair

State Reason for Planning Request: To comply with City Ordinances
so as to be allowed to operate the business

ALL MATERIALS/DOCUMENTATION, INCLUDING A SITE-PLAN, MUST BE SUBMITTED WITH APPLICATION THAT IS APPLICABLE TO PLANNING REQUEST.

I HEREBY APPLY FOR CONSIDERATION OF THE ABOVE DESCRIBED REQUEST AND DECLARE THAT THE INFORMATION AND MATERIALS SUBMITTED WITH THE APPLICATION ARE COMPLETE AND ACCURATE. I UNDERSTAND THAT APPLICANTS ARE REQUIRED TO REIMBURSE THE CITY FOR ALL OUT-OF-POCKET COSTS INCURRED FOR PROCESSING, REVIEWING, AND HEARING THE APPLICATION. THESE COSTS SHALL INCLUDE, BUT ARE NOT LIMITED TO: PUBLICATION AND MAILING OF NOTICES, REVIEW BY THE CITY'S ENGINEERING, PLANNING AND OTHER CONSULTANTS; LEGALS COSTS, AND RECORDING FEES. AN ESCROW DEPOSIT TO COVER THESE COSTS WILL BE COLLECTED BY THE CITY AT THE TIME OF APPLICATION. ANY BALANCE REMAINING AFTER REVIEW IS COMPLETE WILL BE REFUNDED TO THE APPLICANT. NO INTEREST IS PAID ON ESCROW DEPOSITS

SIGNATURE OF APPLICANT: *Mi Cayte*

SIGNATURE OF OWNER (IF APPLICABLE): *Blue River Properties LLC*
L. L. HANCOCK

For Office Use

Fee: \$1,450 Date Paid: 08/12/15 Receipt #: _____

Publication of Notice Date: _____

Public Hearing Date: _____

P.C. Resolution #: _____

Council Action Date: _____

Council Resolution #: _____

EXHIBIT A

Lots Eleven (11), Twelve (12), and Thirteen (13), Block Three (3), THE FARMER'S TERMINAL PACKING COMPANY'S ADDITION to the Village of Newport, Washington County, Minnesota as surveyed and platted and now on file in the office of the Registrar of Titles in and for said Washington County, State of Minnesota.

1182119

Receipt#: 57265



WAR \$46.00
SDT \$594.00
Conservation Fee: \$5.00
CRV Filed
No Delinquent Taxes
Transfer Entered

Certified Filed and/or recorded on:
12/27/2007 3:12 PM
1182119
Certificate #: 64188
64810

Return to:
LAND TITLE - RECORDINGS
1900 SILVER LAKE ROAD
SUITE 200
NEW BRIGHTON MN 55112

Office of the Registrar of Titles
Property Records & Taxpayer Services
Washington County, MN
Kevin J Corbid, County Recorder
Molly O Rourke, Auditor Treasurer

Handwritten notes: No. 028. 22. 41. 0025 (11), 24. 028. 22. 41. 0026 (12), 24. 028. 22. 41. 0027 (13), 158094

Form No. 9-M — WARRANTY DEED

Corporation, Partnership or Limited Liability Company to Corporation, Partnership or Limited Liability Company

DEED TAX DUE: \$594.00

Date: October 22, 2007

FOR VALUABLE CONSIDERATION, 4 CHILDREN, INC., a corporation under the laws of Ohio, Grantor, hereby conveys and warrants to Blue River Properties, LLP, Grantee, a Limited Liability Partnership under the laws of Minnesota, real property in Washington County, Minnesota, described as follows:

SEE ATTACHED EXHIBIT A

together with all hereditaments and appurtenances belonging thereto, subject to the following exceptions: easements, restrictions and covenants of record, if any.

Check box if applicable:

- The Seller certifies that the seller does not know of any wells on the described real property.
A well disclosure certificate accompanies this document.
I am familiar with the property described in this instrument and I certify that the status and number of wells on the described real property have not changed since the last previously filed well disclosure certificate.

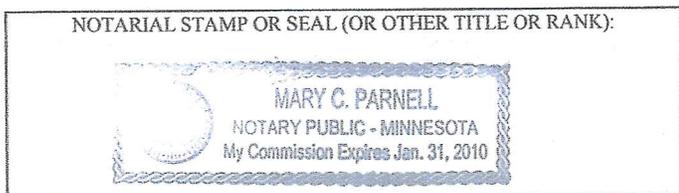
Affix Deed Tax Stamp Here

4 Children, Inc.
By: [Signature]
Randal Lewis
Its: President

By:
Its:

STATE OF MINNESOTA
COUNTY OF RAMSEY } ss.

This instrument was acknowledged before me on October 22, 2007, by Randal Lewis, the President of 4 CHILDREN, INC., a corporation under the laws of Ohio, on behalf of the corporation.



[Signature]
SIGNATURE OF NOTARY PUBLIC OR OTHER OFFICIAL

Check here if part or all of the land is Registered (Torrens)
Tax Statements for the real property described in this instrument should be sent to (include name and address of Grantee):

THIS INSTRUMENT WAS DRAFTED BY (NAME AND ADDRESS):

Blue River Properties, LLP

COMMITMENT

SCHEDULE A

Commitment No. 275587

Case No. 297092

1. Effective Date: September 25, 2007 at 7:00 A.M.
2. Policy or Policies to be issued:
 - (a) ALTA Owner's Policy - 6/17/06 Amount \$180,000.00
Proposed Insured: Blue River Properties, LLP
 - (b) ALTA Long Form Loan Policy - 6/17/06 Amount - 0 -
Proposed Insured: NONE
3. Title to the Fee Simple estate or interest in the land described or referred to in this Commitment is at the effective date hereof vested in:
4 Children, Inc., an Ohio corporation
4. The land referred to in the Commitment is described as follows:
Lots Eleven (11), Twelve (12), and Thirteen (13), Block Three (3), THE FARMER'S TERMINAL PACKING COMPANY'S ADDITION to the Village of Newport, Washington County, Minnesota as surveyed and platted and now on file in the office of the Registrar of Titles in and for said Washington County, State of Minnesota.

2193 3rd Avenue
Newport, Minnesota 55055

Torrens Property, Washington County
Certificate Number: 64188

This commitment is invalid unless the Insuring Provisions and Schedules A and B are attached.

Schedule A consists of 1 page(s)

BLUE RIVER PROP LLP
3725 BURGUNDY DR
SAINT PAUL MN 55122-3159



PROPERTY INFORMATION:

PIN: 26.028.22.41.0027

Property Address:
2193 3RD AVE
NEWPORT MN 55055

Property Description:

THE FARMER'S TERM PACKNG CO ADD Lot 13 Block 3



Department of
Property Records
and Taxpayer Services

14949 62nd Street North - PO Box 6
Stillwater, MN 55082-0006
(651) 430-6175
www.co.washington.mn.us

TAXPAYER(S):
BLUE RIVER PROP LLP
3725 BURGUNDY DR
SAINT PAUL MN 55122-3159



90280

PROPERTY INFORMATION:

PIN: 26.028.22.41.0026

Property Address:

Property Description:

THE FARMER'S TERM PACKNG CO ADD Lot 12 Block 3



Department of
Property Records
and Taxpayer Services

14949 62nd Street North - PO Box 6
Stillwater, MN 55082-0006
(651) 430-6175
www.co.washington.mn.us

TAXPAYER(S):
BLUE RIVER PROP LLP
3725 BURGUNDY DR
SAINT PAUL MN 55122-3159



90279

PROPERTY INFORMATION:

PIN: 26.028.22.41.0025

Property Address:

Property Description:

THE FARMER'S TERM PACKNG CO ADD Lot 11 Block 3

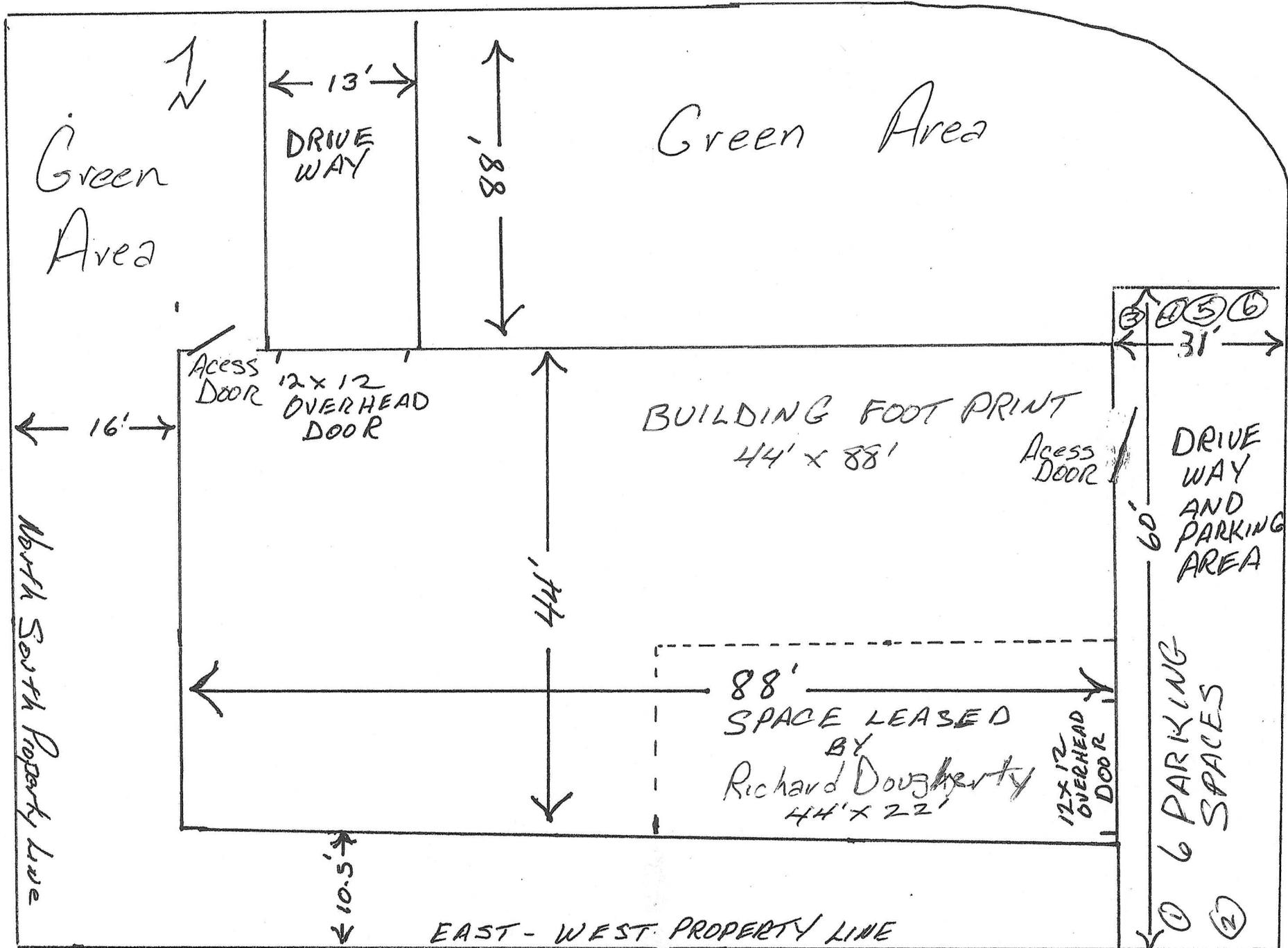
Proposed Property Taxes and Meetings by Jurisdiction for Your Property			
Contact Information	Meeting Information	Actual 2014	Proposed 2015 % Chg
State General Tax			

Step 2	PROPOSED TAX	\$4,526.00
Step 3	PROPERTY TAX STATEMENT Coming in March, 2015	
The time to provide feedback on PROPOSED LEVIES is NOW		

PROPOSED TAXES 2015			
THIS IS NOT A BILL - DO NOT PAY			
VALUES AND CLASSIFICATION			
	Taxes Payable Year	2014	2015
Step 1	Estimated Market Value:	22,800	22,800
	Homestead Exclusion:		
	Other Exclusion/Deferral:		
	Taxable Market Value:	22,800	22,800
	Class:	Comm/Ind	Comm/Ind
Step 2	PROPOSED TAX		\$870.00
Step 3	PROPERTY TAX STATEMENT Coming in March, 2015		
The time to provide feedback on PROPOSED LEVIES is NOW			
It is too late to appeal your value without going to Tax Court			

PROPOSED TAXES 2015			
THIS IS NOT A BILL - DO NOT PAY			
VALUES AND CLASSIFICATION			
	Taxes Payable Year	2014	2015
Step 1	Estimated Market Value:	7,100	7,100
	Homestead Exclusion:		
	Other Exclusion/Deferral:		
	Taxable Market Value:	7,100	7,100
	Class:	Comm/Ind	Comm/Ind
Step 2	PROPOSED TAX		\$298.00
Step 3	PROPERTY TAX STATEMENT Coming in March, 2015		
The time to provide feedback on PROPOSED LEVIES is NOW			
It is too late to appeal your value without going to Tax Court			

2193 3RD AVE

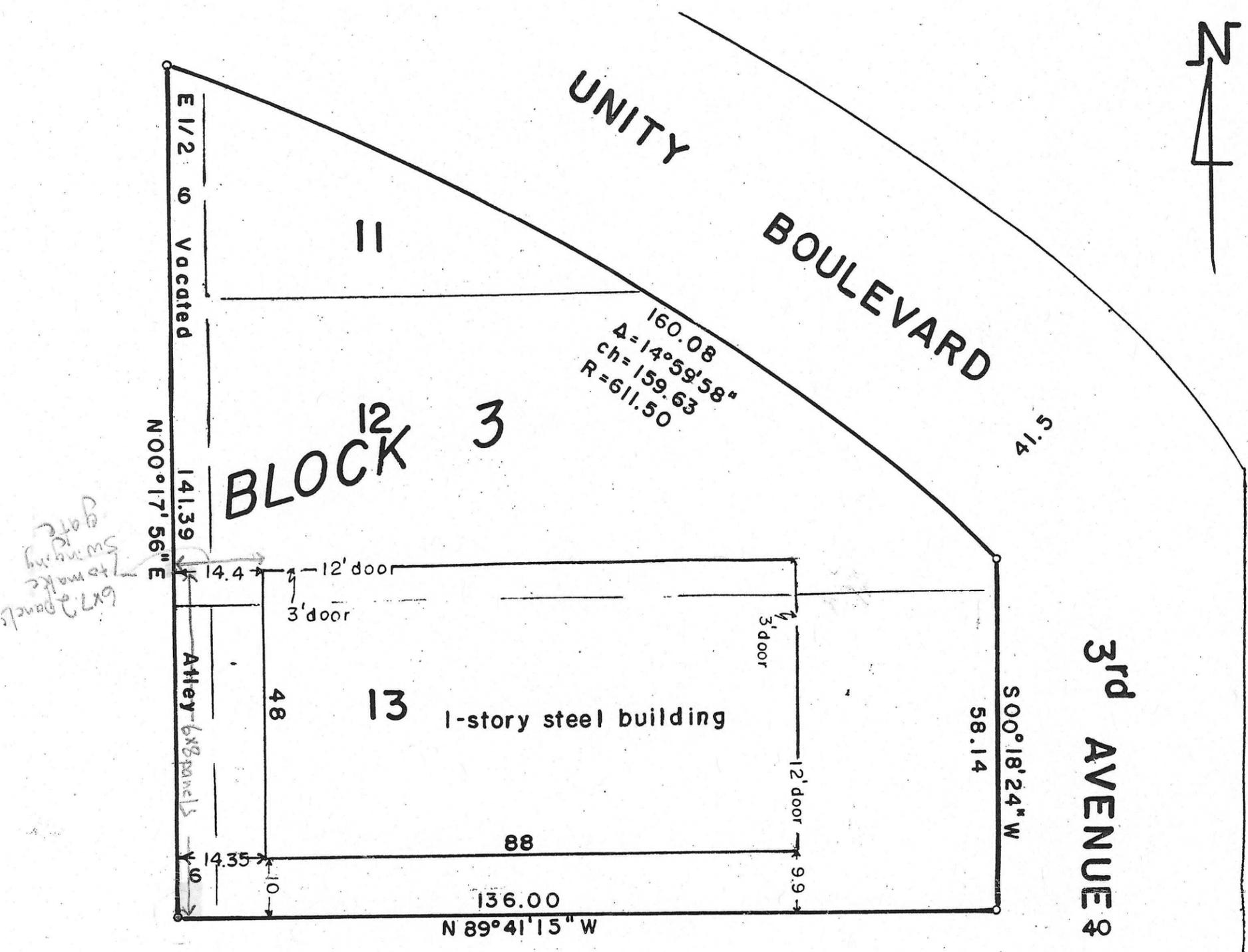


3RD AVE

EAST - WEST PROPERTY LINE

DRAWING IS NOT TO SCALE

Certificate of Survey for: Randy Lewis

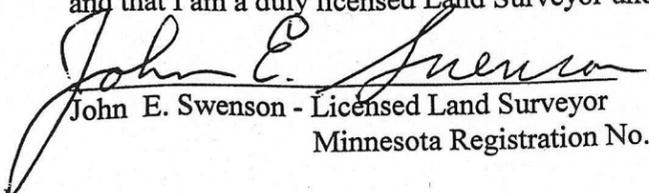


June 18, 2001 Scale 1 inch = 20 feet
 o - Denotes 1/2 inch iron pipe found in place with Minnesota
 Registration No. 14945.
 Location of building shown according to found in place irons.

DESCRIPTION

Lots 11, 12, and 13, BLOCK 3, THE FARMERS TERMINAL PACKING
 COMPANY'S ADDITION to the City of Newport, Washington County,
 Minnesota. Together with the east 6 feet of vacated alley.

I hereby certify that this survey was prepared by or under my direct supervision
 and that I am a duly licensed Land Surveyor under the laws of the State of Minnesota.


 John E. Swenson - Licensed Land Surveyor
 Minnesota Registration No. 10460



Conditional Use Permit Application Checklist

Conditional Use Permits are covered under Section 1310.10 of the Zoning Code. Please provide the following information with your application for an Conditional Use Permit.

GENERAL REQUIREMENTS:

1. Application Form
2. Fees
3. Escrow
4. Complete legal description and PID number of all parcels included in the request. The legal descriptions must be copied directly from the deed and provided in a word document.
5. A full description of the request—proposed use of the site, activities proposed, hours of operation, etc. (either on the application form or in a letter)
6. A map, aerial photo or plan showing the parcel in question and all property within five hundred (500) feet of the parcel boundaries
7. Site Plan
 - One (1) 11"x17" hard copy and/or one (1) electronic copy. The City may require a larger size plan if needed to adequately review the request.

Plan Sheet Requirements:

- Title block
- Name, address, phone number for owner, developer, surveyor, engineer
- Date of preparation and revision dates
- North Arrow
- Graphic scale not less than 1:100

INCLUDED IN SUBMITTAL

- | | |
|---|-----------------------------|
| <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO |
| <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO |
| <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO |
| <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO |
| <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO |
| <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO |
| <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO |
| <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO |

SITE PLAN REQUIREMENTS - EXISTING AND PROPOSED:

1. Property lines and dimensions
2. Area in acres and square feet
3. Existing and proposed building and parking locations and dimensions
4. Existing and proposed setbacks
5. Buildable area and the existing and proposed area of the parcel(s) covered by impervious surfaces
6. Existing and proposed driveways
7. Stormwater analysis and proposed best management practices, if required by the City Engineer
8. Septic system and well (if applicable)

INCLUDED IN SUBMITTAL

- | | |
|---|--|
| <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO |
| <input type="checkbox"/> YES | <input checked="" type="checkbox"/> NO |
| <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO |
| <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO |
| <input type="checkbox"/> YES | <input checked="" type="checkbox"/> NO |
| <input checked="" type="checkbox"/> YES | <input type="checkbox"/> NO |
| <input type="checkbox"/> YES | <input checked="" type="checkbox"/> NO |
| <input type="checkbox"/> YES | <input checked="" type="checkbox"/> NO |

9. Vegetation and landscaping (if applicable to the request) YES NO
10. Wetland delineation (if applicable) YES NO
11. Topographic contours at 2-foot intervals, bluff line (if applicable) YES NO
12. Waterbodies, Ordinary High Water Level and 100 year flood elevation (if applicable) YES NO
13. Other proposed improvements and additional information relevant to the request YES NO

**PLANNING COMMISSION
RESOLUTION NO. P.C. 2015-9**

A RESOLUTION RECOMMENDING THE NEWPORT CITY COUNCIL APPROVE AN AMENDMENT TO A CONDITIONAL USE PERMIT REQUESTED BY RICHARD DOUGHERTY, 9548 66TH STREET COURT S, COTTAGE GROVE, MN 55016, FOR PROPERTY LOCATED AT 2193 3RD AVENUE, NEWPORT, MN 55055

WHEREAS, Richard Dougherty, 9548 66th Street Court S, Cottage Grove, has submitted a request for an amendment to a Conditional Use Permit to add Automotive Services and Car Specialty Services to the existing Conditional Use Permit for Auto Repair; and

WHEREAS, The proposed conditional use permit amendment is for property located 2193 3rd Avenue, Newport, MN 55055, and is more fully legally described as follows:

PID#26.028.22.41.0027, 26.028.22.41.0026, and 26.028.22.41.0025

LOTS ELEVEN (11), TWELVE (12), AND THIRTEEN (13), BLOCK THREE (3), THE FARMER'S TERMINAL PACKING COMPANY'S ADDITION TO THE VILLAGE OF NEWPORT, WASHINGTON COUNTY, MINNESOTA, AS SURVEYED AND PLATTED AND NOW ON FILE IN THE OFFICE OF THE REGISTRAR OF TITLES IN AND FOR SAID WASHINGTON COUNTY, STATE OF MINNESOTA; and

WHEREAS, The described property is zoned Transit-Oriented Mixed Use (MX-3); and

WHEREAS, Section 1310.10 Subd. 2 Criteria states the criteria for acting upon a Conditional Use Permit (C.U.P.) application as follows: *“In acting upon an application for a conditional use permit, the City shall consider the effect of the proposed use upon the health, safety, and general welfare of the City including but not limited to the factors of noise, glare, odor, electrical interference, vibration, dust, and other nuisances; fire and safety hazards; existing and anticipated traffic conditions; parking facilities on adjacent streets and land; the effect on surrounding properties, including valuation, aesthetics and scenic views, land uses, character and integrity of the neighborhood; consistency with the Newport comprehensive plan; impact on governmental facilities and services, including roads, sanitary sewer, water and police and fire; effect on sensitive environmental features including lakes, surface and underground water supply and quality, wetlands, slopes flood plains and soils; and other factors as found relevant by the City. The City may also consider whether the proposed use complies or is likely to comply in the future with all standards and requirements set out in other regulations or ordinances of the City or other governmental bodies having jurisdiction over the City. In permitting a new conditional use or the alteration of an existing conditional use, the City may impose, in addition to the standards and requirements expressly specified by this chapter, additional conditions which it considers necessary to protect the best interest of the surrounding area or the community as a whole.”*; and

WHEREAS, Following publication, posted, and mailed notice thereof, the Newport Planning Commission held a Public Hearing on September 10, 2015; and

WHEREAS, the Planning Commission’s findings related to the request for approval of a Conditional Use Permit Amendment include the following:

1. The proposed use is designated in Section 1330 of the development code as a conditional use in the MX-3 Zoning District.
2. The proposed use is consistent with the Newport Comprehensive Plan, which supports the development of business and commercial uses in the MX-3 District.
3. The conditions for approval of the proposed use include requirements for development and operation of the site so that the proposed use will not be detrimental to or endanger the public health, safety or general welfare of the City, including the potential impacts of noise, and other nuisances.
4. The proposed use will have no negative impacts governmental facilities and services, including roads, sanitary sewer, water and police and fire.

5. In permitting the amendment to the existing conditional use permit, the City has adopted conditions which it considers necessary to protect the best interest of the surrounding area or community as a whole.

NOW, THEREFORE, BE IT FURTHER RESOLVED That the Newport Planning Commission **Hereby Recommends Newport City Council Approval** for a Conditional Use Permit Amendment to add Automotive Services and Car Specialty Services to the existing Conditional Use Permit for Auto Repair for property located at 2193 3rd Avenue with the following conditions:

1. The use of the site shall conform to the use described in the application submitted to the City on August 12, 2015 and in the Zoning Ordinance.
2. The present and existing parking lot shall not be expanded.
3. The hours of operation shall be between 7:00 a.m. to 6:00 p.m. on Monday through Friday, and 7:00 a.m. to 4:00 p.m. on Saturday.
4. Any change in off-street parking and traffic patterns shall be subject to review and approval by the city engineer. There shall be no on-street parking.
5. Vehicle repair activities and painting shall be conducted within the building on the property, Painting shall be limited to "touch ups" for minor repairs, and may not include the use of compressors, welding equipment, or other equipment that creates noise that is audible to adjacent residential uses.
6. The Applicant shall not emit, or permit the presence of emissions of noxious matter in the form of, but not limited to, gases, vapors, odor, dust, fumes (including truck exhaust), mists or any combination of these forms that is detrimental to or otherwise endangers the comfort, health or safety of the residents of the City.
7. The use of the property shall not cause or result in any excessive noise, vibration, dust, dirt, smoke, odor, noxious gases, glare or waste. The use shall meet the State of Minnesota standards for noise and air quality.
8. No outside storage is permitted on the site.
9. All trash and recycling equipment shall be stored within an closed structure.
10. Vehicles parked for more than 48 hours must be screened from the eye-level view of adjacent residential areas.
11. Any new lighting shall meet the ordinance requirements.
12. The Applicant shall apply to the City for a permit for new sign(s) proposed as the site. All signs shall meet the ordinance requirements.
13. The applicant shall pay all fees and escrow associated with this application.

Adopted this 10th day of September, 2015 by the Newport Planning Commission.

VOTE: Mahmood	_____
Haley	_____
Prestegaard	_____
Taylor	_____
Tweeten	_____

Signed: _____
Anthony Mahmood, Chairperson

ATTEST: _____
Deb Hill, City Administrator



444 Cedar Street, Suite 1500
Saint Paul, MN 55101
651.292.4400
tkda.com

Memorandum

To:	Newport Planning Commission	Reference:	Planning Commission Meeting September 10, 2015
Copies To:	Deb Hill, City Administrator Renee Eisenbeisz, Executive Analyst	Project No.:	15743.000
From:	Sherri Buss, RLA AICP, City Planner	Routing:	
Date:	September 2, 2015		

The Planning Commission meeting on September 10 will include a first discussion on updating the city's Sign Ordinance, Section 1380 of the Zoning Ordinance.

The League of Minnesota Cities is recommending that cities update their sign ordinances based on a recent Supreme Court decision (*Reed v. Town of Gilbert*, June 18, 2015) that dramatically impacts how local governments may regulate signs. I have attached some information that summarizes the decision and its impacts on sign regulation. I also discussed the decision and its impacts with an attorney at the League of Minnesota Cities, and he provided further comment on the decision and offered some insights on how to address some specific issues in the ordinance and sample language.

While past Supreme Court decisions have usually made distinctions between commercial and non-commercial speech regulation, and provided for more protection of First Amendment rights related to free speech for non-commercial speech, the *Reed v. Town of Gilbert* decision did not do that.

A quick summary of *Reed v. Town of Gilbert*:

- The case revolved around the ordinance of the Town of Gilbert, Arizona. Like many cities, including Newport, the Town of Gilbert ordinance identified various categories of signs based on the type of information the signs contained (such as real estate signs, political signs, institutional signs, etc.), and then regulated each category differently.
- The church was cited by the Town for violating its ordinance. The Church had put up directional signs which were allowed for commercial uses, but not for churches in the Town's ordinance.
- The U.S. Supreme Court sided with the church, and said that the ordinance violated the church's First Amendment right to free speech.
- Based on the ruling, cities may not (without a compelling government purpose like safety) enact or enforce sign ordinance that differentiate based on the topic or content of the sign. So Newport and other cities may not have specific sign requirements for church

signs, real estate signs, political signs, garage/lawn sale signs, community event signs, advertising signs, etc.

- Sign regulations should be limited to matters that have nothing to do with the sign's message. Signs can regulate size, building materials, lighting, moving parts, location, etc.

The League of Minnesota Cities provided some further guidance on how to address specific issues:

- Their attorney recommended that the category political signs be eliminated, and that instead the ordinance reference the Minnesota Statute for Noncommercial signs (211B.045), which the State adopted in place of previous regulations for political signs, to address the outcome of *Reed v. town of Gilbert*.
- The ordinance cannot refer to real estate signs, but can talk about the status of a property, and indicate that signs may be placed on properties that are for sale, or where a residential or commercial development is occurring.
- The Attorney recommended the City of Hopkins ordinance as a good example of a new ordinance that responds to the Supreme Court decision.

The Planner has developed a draft ordinance that removes all of the references to specific sign content from the current ordinance. It also organizes the ordinance to be clearer and eliminate some duplication that existed in the ordinance.

We will begin discussion of the draft at the Planning Commission meeting on September 10. Sign Ordinances are complex, and this discussion is likely to continue for at least one more meeting.

The major changes to the Sign Ordinance include the following:

- Section 1380.01—The League of Minnesota Cities strongly encourages adding this section, especially the language that indicates the city will not regulate sign content
- Section 1380.02—The League encourages adding this because of some legal challenges to ordinances based on the *Reed* case.
- Section 1380.03—The Planner updated the Definitions section to take out all content-based definitions, and add new ones for sign types included in the ordinance.
- 1380.04 and .05—Moved these section up, and put all items related to administration and required permits in this section
- 1380.06—Lists signs that do not require permits. Consolidated items that were distributed throughout the ordinance here.
- 1380.07—No changes from existing ordinance.
- 1380.08-09—We will discuss these sections in detail. The Planner removed the items related to sign content. We will discuss the types and sizes of signs allowed in each district. Some ordinances set a maximum sign area for signs in commercial and industrial districts.
- 1380.10-.14—Little change from current ordinance except location of these sections.



U.S. Supreme Court Strikes Down Sign Ordinance

Cities should work with the city attorney to examine their sign ordinances to determine whether they have content-based restrictions that may be unconstitutional.

(Published Jul 6, 2015)

The U.S. Supreme Court held on June 18 that a municipal sign ordinance was unconstitutional. In *Reed v. Town of Gilbert*, the Court ruled unanimously that the town's sign ordinance violated the First Amendment because it regulated signs based on their content.

The ordinance in Gilbert, Arizona, prohibits displays of outdoor signs without a permit, but then exempts 23 categories of signs. The case focused on three types of exempt signs—ideological signs, political signs, and temporary directional signs, with different ordinance rules as to size, location, and duration for each.

Ideological signs can be up to 20 square feet with no placement or time restrictions; political signs can be up to 32 square feet, but only displayed during election season; and temporary directional signs are allowed four signs limited to 6 square feet and displayed no more than 12 hours before and one hour after a qualifying event. A church and its pastor challenged the rules applicable to the church's directional signs.

The Court explained that the ordinance employed content-based restrictions because which rules apply depends entirely on the sign's communicative content. The majority opinion emphasized that courts must consider whether a law is content-neutral on its face before turning to its purpose, holding that any content-based restrictions demand strict scrutiny. To survive strict scrutiny, the government must prove the regulations were narrowly tailored to achieve compelling governmental interests, a test that is rarely satisfied.

Assuming for the sake of argument that aesthetics and traffic were compelling government interests, the majority opinion found the ordinance distinctions to be "hopelessly underinclusive," as directional signs are no more of an eyesore or traffic hazard than ideological or political signs. In a separate concurring opinion, several justices noted the ordinance "does not pass strict scrutiny, or intermediate scrutiny, or even the laugh test."

View the Supreme Court decision (pdf) ([Link to: http://www.supremecourt.gov/opinions/14pdf/13-502_9olb.pdf?inline=true](http://www.supremecourt.gov/opinions/14pdf/13-502_9olb.pdf?inline=true))

What cities should do

Cities should work with the city attorney to examine their sign ordinances to determine whether they have content-based restrictions that may be similarly unconstitutional. In order to withstand First Amendment scrutiny, regulations should be content-neutral—not based on communicative content.

Content-neutral rules are objectively based time, place, and manner restrictions, such as rules about size and location. Also, certain provisions, such as a message substitution clause, should be included in any sign ordinance in order to make it more defensible to legal challenge.

Although the *Reed* decision does not mention the distinction, previously the Court has held that non-commercial speech gets greater First Amendment protection than commercial speech. A message substitution clause provides that for every sign that is allowed, any non-commercial message could be legally substituted. This ensures that non-commercial speech is never discriminated against based on content because it will always allow a non-commercial message on any sign.

For more on this topic, see the LMC information memo Sign Ordinances and the First Amendment (pdf) ([Link to: http://www.lmc.org/media/document/1/signordinancesandfirstamendment.pdf?inline=true](http://www.lmc.org/media/document/1/signordinancesandfirstamendment.pdf?inline=true)).

Read the current issue of the Cities Bulletin ([Link to: http://www.lmc.org/page/1/cities-bulletin-newsletter.jsp](http://www.lmc.org/page/1/cities-bulletin-newsletter.jsp))

* By posting you are agreeing to the LMC Comment Policy ([Link to: http://www.lmc.org/page/1/comment-policy.jsp](http://www.lmc.org/page/1/comment-policy.jsp)).

0 Comments

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Contact Jed Burkett

Land Use Loss Control Attorney

(651) 281-1247 or (800) 925-1122

jburkett@lmc.org (Link to: <mailto:jburkett@lmc.org>)

Contact Tom Grundhoefer

General Counsel

(651) 281-1266 or (800) 925-1122

tgrundho@lmc.org (Link to: <mailto:tgrundho@lmc.org>)

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(Link to: <http://www.lmc.org/ads/102704>)

Signs: A Different Kind of Land Use (especially after the *Reed* decision)

- July 20, 2015
Land Use Webinar
 - International
Municipal Lawyers
Association



Faculty

- Michael Giaimo, moderator
 - Robinson & Cole, Boston MA
 - Daniel Mandelker, moderator
 - Stamper Professor of Law, Washington
University School of Law, St. Louis MO
 - Randal Morrison
 - Sabine & Morrison, San Diego CA
 - John M. Baker
 - Greene Espel PLLP, Minneapolis MN
-

Overview

- Why good land-use law advice can be bad advice when signs are involved
 - First Amendment Sign Law 101
 - *Reed v. Town of Gilbert* (June 18, 2015)
 - Background
 - Outcome
 - Likely controversies ahead
 - Questions
-

The paradigm shift

How ordinary thinking about land-use problems can cloud your thinking about sign law problems

Thinking about discretion

- In land-use law, preserving discretion is a good thing
 - You can't foresee everything
 - Rigid rules can have unforeseen consequences
 - With 1st Amendment-protected-conduct, preserving discretion creates problems
 - Because signs are expressive conduct, courts distrust discretion
 - Even if you never exercise discretion, an ordinance that allows you to exercise it over sign applications may be unconstitutional
-

Example

- If a candidate "runs" for a nonexistent office, does he get the benefit of laws permitting election signs in the right-of-way?



Thinking about fine-tuning

- In land-use law, the best regulations are often the most precise and specific
 - In sign law, the process of fine-tuning your ordinance (by treating different types of signs differently) creates occasions for content-discrimination
 - “Dumbing down” a sign ordinance to a simple set of generally applicable rules can sometimes achieve content-neutrality, but risks overinclusivity (if taken too far)
-

Thinking about hypotheticals

- In typical land-use situations, anticipating unlikely hypotheticals wastes attorneys’ fees
 - You can focus on actual proposals, not imaginary ones
 - In sign law situations, a judge’s answers to unlikely hypotheticals can bring your ordinance down
 - Overly-broad rules can sometimes be attacked regardless of what people actually seek permission to do
-

First Amendment Sign Law 101



First Amendment

Governments “shall make no law [1] respecting an establishment of religion, or prohibiting the free exercise thereof; [2] or abridging the freedom of speech, or of the press; [3] or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Signs and the First Amendment

Every element of the First Amendment can be invoked by use of a sign.

Sign regulator’s mantra:
The medium is not the message.
We regulate the medium, not the message.

Police Dept of Chicago v. Mosley

- Above all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.
 - The expression: a protest sign on public sidewalk
 - 408 US 92 (1972)
-

Content neutrality

- Content Neutrality – no reference at all to message?
 - Much court confusion
 - “Just one look” rule (*Solantic*, 11th Cir.)
- *Hill v Colorado*, 530 US 703 (2000)
 - Rule “justified without reference to content”
 - Rule adopted because of gov’t disagreement w message?
 - J. Stevens, writing for the Court: “ cursory examination” is not problematic

Content Neutrality (cont’d)

- *Thomas v Chicago Park Dist*, 534 US 316 (2002)
 - Park use permit was content neutral, TPM reg; discretion limited
- If content neutrality is required, but is violated, strict scrutiny is required
 - Must further compelling interest
 - Must be narrowly tailored to achieve it
 - Government usually loses

Commercial Speech Doctrine

- Noncommercial: marketplace of ideas (religion, politics, etc.)
- Commercial: marketplace of goods and services; econ interests
- Hybrid / mixed speech: what is the dominant purpose?

Commercial Speech (cont’d)

- *Central Hudson v PSC*, 447 US 557 (1980)
 - 1) Concern legal products / services, not false or deceptive
 - 2) Gov’t interest substantial
 - 3) Directly advance the asserted interest
 - 4) Tailoring: not more extensive than necessary

Commercial Speech (cont’d)

- No protection for commercial speech that is false, misleading, or deceptive
- *FTC v. Kevin Trudeau*, 662 F.3d 947 (7th Cir 2011)
- \$37.6 million sanction for false / misleading claims in Cancer Cures
- First Amendment / Free Speech defense -- rejected

Reed v. Town of Gilbert, 135 S. Ct. 2218 (June 18, 2015)

- The Supreme Court Revisits Content Neutrality

Reed v. Town of Gilbert

- The parties:
 - Plaintiffs are a small “homeless” church its pastor, and its members
 - They’re “homeless” because they lack a building of their own, and meet in other available places
 - They use temporary directional signs to guide people to their services
 - Defendant is a suburb of Phoenix, with about 200,000 residents

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The case in pictures

Plaintiffs’ “qualifying event” (QE) sign



Candidates’ “political” signs



20

The case in numbers

- Nonpolitical, non-ideological, non-commercial “QE” signs can’t exceed 6 sq. ft.
- Maximum time up: 12 hours before, until 1 hour after the event
- Political temp signs may be up to 32 sq. ft. (in nonresidential zones)
- Maximum time up: 60 days before and 15 days after elections

21

The Town also has an “ideological” sign rule

- They can be larger (i.e. 20 sq. ft.) than “qualifying event” signs but not as big as political signs
- They can be displayed for an unlimited period of time.
- However, they can’t be displayed in the right-of-way.

22

Maximum noncommercial temp sign sizes in Gilbert



23

The novel setting of this case

- Few, if any, courts have held that variations *among* types of *noncommercial* speech are nevertheless content-neutral – except for the Ninth Circuit’s decisions in this case.
- But disfavoring event signs, compared to political signs and ideological signs, poses little real risk of censorship or persecution

The novel setting of this case

- Lurking behind Gilbert's complex sign code is an Arizona statute that forbids cities from removing or taking down election signs during specified election seasons
 - That's the source of the Town's political sign size limits

25

Reed v. Town of Gilbert: The Outcome

- Majority opinion (Justice Clarence Thomas)
 - "Not Surprising" vs. "Surprising" aspects
- Concurrence (Justice Samuel Alito)
- Concurrences in the judgment (Justice Stephen Breyer, Justice Elena Kagan)

Majority Opinion



"Not Surprising" Statement:

Content-based regulation is **presumptively unconstitutional** and requires a **compelling governmental interest**

Majority Opinion



"Not Surprising" Statement:

"Government regulation of speech is content based if a law **applies to particular speech because of the topic discussed or the idea or message expressed.**"

Majority Opinion



"Surprising" Statement:

Laws that **cannot be "justified without reference to the content** of the regulated speech" are content-based.

Majority Opinion



Compare *Ward*: "*The principal inquiry in determining content neutrality, in speech cases generally and in time, place, or manner cases in particular, is whether the government has adopted a regulation of speech because of disagreement with the message it conveys.*"

Majority Opinion



"Surprising" Statement:

"Some facial distinctions based on a message are obvious, defining regulated speech by particular **subject matter**, and others are more subtle, defining regulated speech by its **function or purpose**"

Majority Opinion



"Surprising" Statement:

Categorical signs, e.g. directional signs, are content-based

Majority Opinion



"Surprising" Statement:

Purpose is not relevant if a sign regulation is content-based

Majority Opinion



"Surprising" Statement:

Event-based regulations are not content neutral

The concurrence of J. Alito (+2)



□ "I **join the opinion of the Court** but add a few words of further explanation."

□ Justices Kennedy and Sotomayor joined his concurrence

The concurrence of J. Alito (+2)



□ "I will not attempt to provide anything like a comprehensive list, **but here are some rules that *would not be content-based***:"

- Rules regulating **size** "based on any content-neutral criteria,
- Rules regulating **the locations** in which signs may be placed

The concurrence of J. Alito (+2)



- Rules distinguishing between –
 - “**lighted** and **unlighted** signs”
 - “signs with **fixed messages** and electronic signs with **messages that change**”
 - “placement of signs on
 - **public** and **private property**”
 - **commercial** and **residential property**”

The concurrence of J. Alito (+2)



- “Rules **distinguishing between on-premises and off-premises signs**”
- “Rules restricting the total **number of signs per mile** of roadway”
- Rules imposing **time restrictions on signs advertising a one-time event**,” which are “akin to rules restricting times within which speech or music is allowed.”

The concurrence of J. Alito (+2)



- The **government itself may “put up all manner of signs** to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots.”

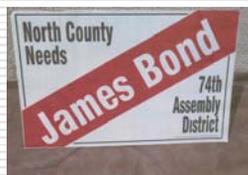
Reed: what was left unanswered?

The aftermath of *Reed*

Regulation by Sign Category and Function

- Old way: Extra opportunities to post political signs before elections
- New way: Specified periods when physical sign limits are lifted for noncommercial signs

G.K. Ltd. Travel v. City of Lake Oswego, 436 F.3d 1064 (9th Cir. 2006)



The aftermath of *Reed*

Regulation by Sign Category and Function:

Old way: exception for sales, development, and financing signs

New way: exception for signs on property for sale, or property where construction is ongoing



The aftermath of *Reed*

Did *Reed* changed the way lower courts must analyze the regulation of commercial signs?



Photo credit: Mark Walbran

The aftermath of *Reed*

- *Reed* involved the permissibility of distinctions among forms of *non-commercial* speech
- At oral argument, Rev. Reed's attorney agreed that "commercial speech, under this Court's jurisprudence, can be treated differently, and that's one of the important things."

The aftermath of *Reed*

- Billboard companies may claim that commercial speech is entitled to the same protection as non-commercial speech, citing the majority opinion's description of regulation "*because of the topic discussed*" as "content-based" regulation.
- Did the majority radically affect billboard regulation, by not mentioning billboards?

The aftermath of *Reed*

- The Alito concurrence's list of "rules that would not be content based" included "rules distinguishing between on-premises and off-premises signs."
- *Metromedia v. City of San Diego* (1981) upheld this distinction, and it has not been overruled

The aftermath of *Reed*

- *Reed* overruled no prior decision.
- *Implicit* overruling is disfavored.
 - "[I]f a precedent of this Court has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the [lower courts] should follow the case which directly controls, leaving to [the Supreme] Court the prerogative of overruling its own decisions." (*Agostini v. Felton*, 1997)

The aftermath of *Reed*

- Where does *Reed* leave community-wide campaigns involving characters whimsically-decorated by donor groups?
 - Before *Reed*: a Washington D.C. judge ordered the District's "Party Animals" program (involving decorated donkey or elephant statues) to allow PETA to dress one as a sad, abused circus elephant. *PETA v. Gittens*, 215 F. Supp. 2d 120 (D.D.C. 2002).
 - DC had allowed some political messages on donkeys or elephants, but said PETA's design was not "festive" or "good art."

Billboards – Metromedia 1981

- Cities can ban billboards
- No favoring of commercial speech over non commercial
- No favoring of particular kinds of noncommercial over other types
- Reed does not change Metromedia

Government Speech – 10 C's

- Pleasant Grove v Summum
 - Ten Commandments vs Seven Aphorisms of Summum religion
 - 555 U.S. 460 (2009)
- Van Orden v Perry
 - Historical – no Establishment violation
 - Commandments monument on grounds of TX state capital
 - 545 US 677 (2005)

Revising a Sign Code post-Reed

- Pure TPM
- Message substitution favoring noncommercial messages of any type
- Universal message substitution – any legal sign (location, structure) can display any legal message
 - Long term consequences ... ?
 - Still ban billboards as “general advertising for hire”

- This presentation is a teaching tool that is useful only in conjunction with the accompanying remarks of the presenters.
- It does not constitute legal advice, and is no substitute for legal advice.
- It does not fully reflect the views of every judge, or even of each presenter.

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Related questions

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Section 1380 - Signs

Section 1380, Signs: ~~“The Code of Ordinances of the City of Newport, County of Washington, State of Minnesota,” shall be amended by amending Chapter 13, Zoning Ordinance of the City Code, for purposes of adding the following:~~

1380.01 Purpose and ~~Intent~~ Definitions.**A. Findings.** The City Council hereby finds the following:

1. Exterior signs have a substantial impact on the character and quality of the environment.
2. Signs provide an important medium through which individuals may convey a variety of messages.
3. Signs can create traffic hazards, aesthetic concerns, and detriments to property values, thereby threatening the public health, safety and welfare.
4. The City’s zoning regulations have historically included regulation of signs in an effort to provide adequate means of expression and to promote the economic viability of the business community, while protecting the city and its citizens from a proliferation of signs of a type, size, location, and character that would adversely impact upon the aesthetics of the community and threaten the health, safety, and welfare of the community. The regulation of the physical characteristics of signs within the City has had a positive impact on traffic safety and the appearance of the community.

B. Purpose and Intent. It is not the purpose or intent of this sign ordinance to regulate the message displayed on any sign; nor is it the purpose or intent of this article to regulate any building design or any display not defined as a sign, or any sign which cannot be viewed from outside a building. The purpose and intent of this article is to:

1. Regulate the number, location, size, type, illumination and other physical characteristics of signs within the city in order to promote the public health, safety, and welfare.
2. Maintain, enhance and improve the aesthetic environment of the city by preventing visual clutter that is harmful to the appearance of the community.
3. Improve the visual appearance of the city while providing for effective means of communication, consistent with constitutional guarantees and the city’s goals of public safety and aesthetics.
4. Provide for fair and consistent enforcement of the sign regulations set forth under the zoning authority of the City.

C. Effect. A sign may be erected, mounted, displayed or maintained in the city if it is in conformance with the provisions of these regulations. The effect of this sign ordinance is to:

1. Allow a wide variety of sign types in commercial zones, and a more limited variety of signs in other zones, subject to the standards set forth in this sign ordinance.
2. Allow certain small, unobtrusive signs incidental to the principal use of a site in all zones when in compliance with the requirements of this sign ordinance.

- 3. Prohibit signs whose location, size, type, illumination, or other physical characteristics negatively affect the environment and where the communication can be accomplished by means having a lesser impact on the environmental and the public health, safety, and welfare.
- 4. Provide for the enforcement of the provisions of this sign ordinance.

~~The purpose of this Ordinance is to protect and promote the general welfare, health, safety and order within the City of Newport through the standards, regulations and procedures governing the erection, use and/or display of devices, signs or symbols serving as visual communicative media to persons situated within or upon public rights of way or properties.~~

~~The provisions of this Ordinance are intended to encourage creativity, a reasonable degree of freedom of choice, an opportunity for effective communication and a sense of concern for the visual amenities on the part of those designing, displaying or otherwise utilizing needed communicative media of the types regulated by this Ordinance, while at the same time assuring that the public is not endangered, annoyed or distracted by the unsafe, disorderly, indiscriminate or unnecessary use of such communicative facilities.~~

1380.02 Severability.

If any section, subsection, sentence, clause, or phrase of this Sign Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Sign Ordinance. The City Council hereby declares that it would have adopted the Sign Ordinance in each section, subsection, sentence, or phrase thereof, irrespective of the fact that any one of more sections, subsections, sentences, clauses, or phrases be declared invalid.

1380.03 Definitions.

- A. Abandoned sign: Any sign and/or its supporting sign structure which remains without a message or whose display surface remains blank for a period of one (1) year or more, or any sign which pertains to a time, event or purpose which no longer applies, shall be deemed to have been abandoned. Signs applicable to a business temporarily suspended because of a change in ownership or management of such business shall not be deemed abandoned unless the property remains vacant for a period of one (1) year or more. Any sign remaining after demolition of a principal structure shall be deemed to be abandoned. Signs which are present because of being legally established nonconforming signs or signs which have required a conditional use permit or a variance shall also be subject to the definition of abandoned sign.
- ~~A-B.~~ **Accessory Sign:** A sign relating in its subject matter to the premises on which it is located, or to products, accommodations, services or activities on the premises on which it is located.
- C. **Accessory Use:** A use which is subordinate to the principal use being made of a parcel of land. Accessory uses are defined in the Zoning Code.
- D. Awning: A roof-like cover, often of fabric, plastic, metal or glass designed and intended for protection from the weather or as a decorative embellishment, and which projects from a wall or roof of a structure primarily over a window, walk or the like. Any part of an awning which also projects over a door shall be counted as an awning.
- ~~B-E.~~ **Awning Sign:** A building sign or graphic printed on or in some fashion attached directly to the awning material.

~~C. **Address Sign:** Postal identification numbers only, whether written or in numeric form.~~

~~D. **Area Identification Sign:** A free standing sign which identifies the name of a neighborhood, a residential subdivision, a multiple residential complex consisting of three (3) or more structures, a shopping center or area, an industrial area, an office complex consisting of three (3) or more structures or any combination of the above that could be termed an area.~~

~~E-F. **Banners and Pennants:** Attention-getting devices which resemble flags and are of a nonpermanent paper, cloth or plastic-like consistency.~~

~~F-G. **Bench Signs:** A sign which is affixed to a bench or shelter at a bus stop.~~

~~G-H. **Billboard:** A large ~~outdoor advertising off-site sign structure~~ mounted on one or more legs and designed to display posters or other composite graphics ~~advertisements where the advertised goods or services are not provided at the location of the sign.~~~~

~~H-I. **Building:** A freestanding structure or group of structures joined by a common wall.~~

~~J. **Building Sign:** A sign attached or supported by any structure used or intended for supporting any use or occupancy.~~

~~I. **Bulletin Sign:** An accessory sign ~~which announces goods or services available through the~~ that uses ~~of~~ changeable letters.~~

~~J.
K.~~

~~K. **Church Directional Sign:** A sign which bears the address and/or name of a church and direction arrows pointing to a church location.~~

~~K. **Canopy and Marquee:** A roof like structure projecting over the entrance to a ~~theater, store, etc.~~ building.~~

~~L. **Canopy Sign:** A sign that is part of or attached to a canopy.~~

~~M. **Changeable copy sign:** A sign or portion thereof with characters, letters, or illustrations that can be changed or arranged without altering the face or the surface of the sign. Changeable copy signs do not include signs upon which characters, letters, or illustrations change or rearrange only once in a 24-hour period or less often.~~

~~N. **Commercial Speech:** Speech advertising a business, profession, commodity, service, or entertainment.~~

~~L-O. **District:** A specific zoning district as defined in the Zoning Ordinance.~~

~~M-P. **Dynamic Display Sign:** “Dynamic display” shall mean any characteristics of a sign that appear to have movement or that appear to change, caused by any method other than physically removing and replacing the sign or its components, whether the apparent movement or change is in the display, the sign structure itself, or any other component of the sign. This includes a display that incorporates a technology or method allowing the sign face to change the image without having to physically or mechanically replace the sign face or its components. This also includes any rotating, revolving, moving, flashing, blinking or animated display and any display that incorporates rotating panels, LED lights manipulated through digital input, “digital~~

ink” or any other method or technology that allows the sign face to present a series of images or displays.

~~Q.~~ **Flag:** Any fabric or similar lightweight material attached at one end of the material, usually to a staff or pole, so as to allow movement of the material by atmospheric changes and which contains distinctive colors, patterns, symbols, emblems, insignia, or other symbolic devices.

~~N.R.~~ **Free-Standing Sign:** A sign which is placed in the ground and not affixed to any part of any structure.

~~S.~~ **Height of Sign:** The vertical distance measured from the base of the sign at grade to the top of the highest attached component of the sign.

~~Q.T.~~ **Illuminated Sign:** Any sign which is illuminated by an artificial light source, which shall include all electronic signs utilizing internal light sources and any sign that makes use of electric lighting to reflect off of an otherwise opaque message surface.

~~P.~~ **Institutional Sign:** Any sign or bulletin board which identifies the name and other characteristics of a public or private institution on the site where the sign is located.

~~U.~~ **Interior Sign:** A sign which is located within the interior of any building, or within an enclosed lobby or court of any building, and a sign for and located within the inner or outer body, court of entrance of any theater.

~~V.~~ **Legally established nonconforming sign:** A sign and its support structure lawfully erected prior to the effective date of this ordinance which fails to conform to the requirements of this ordinance. A sign which was erected in accordance with a variance granted prior to the adoption of this ordinance and which does not comply with this ordinance shall be deemed to be a legal nonconforming sign. A sign which was unlawfully erected shall be deemed to be an illegal sign.

~~W.~~ **Monument or Ground Sign:** A freestanding sign with its sign face mounted on the ground or mounted on a base at least as wide as the sign and which has a height exceeding eight (8) feet.

~~X.~~ **Multiple Tenant Site:** A site which has more than one (1) tenant, and each tenant has a separate ground level exterior public entrance.

~~Q.~~ **Nameplate or Identification Sign:** A sign which bears the name and/or address of the occupants of the building.

~~Y.~~ **Non-Accessory Sign:** A sign other than an accessory sign.

~~Z.~~ **Non-commercial Speech:** Messages not classified as Commercial Speech which include, but are not limited to, messages concerning political, religious, social, ideological, public service and informational topics.

~~R-AA.~~ **Permanent Sign:** Any sign which is not a temporary sign.

~~S.~~ —

~~T.~~ **Nonconforming Sign:** A sign which does not conform to the newly enacted requirements of this Ordinance.

~~U~~BB. **Portable Sign:** A sign which is not permanently attached to the ground or any structure and so designed as to be movable from one location to another, including by trailer or on its own wheels.

~~V~~CC. **Principal Building:** A freestanding structure and/or multi-tenant building sharing common walls.

~~W~~DD. **Projecting Sign:** Any sign, all or any part of which extends over public property more than twelve (12) inches.

~~X~~EE. ~~**Permanent Sign:** Any sign which is not a temporary sign.~~

~~Y~~FF. **Pylon Sign:** A freestanding area identification sign greater than twenty (20) feet in height, intended for freeway advertising.

~~Z~~GG. **Roof Sign:** Any sign erected upon or projecting above the roofline of a structure to which it is affixed.

~~AA~~HH. **Sign:** Any letter, word or symbol, device, poster, picture, statuary, reading matter or representation in the nature of an advertisement, announcement, message or visual communication whether painted, posted, printed, affixed or constructed, which is displayed outdoors or on a window or on the interior of a building within three (3) feet of a window and clearly visible from the outside of said building for informational or communicative purposes.

~~BB~~II. **Sign Area:** That area within the marginal lines of the surface which bears the advertisement, or in the case of messages, figures or symbols attached directly to any part of the building, that area which is included in the smallest rectangle which can be made to circumscribe the message, figure or symbol displayed thereon. The stipulated maximum sign area for a freestanding sign refers to a single facing.

~~JJ~~. **Street Frontage:** The edge of a street along a parcel. An interior lot has one (1) street frontage and a corner lot two (2) such frontages.

~~CC~~KK. **Sign Structure:** A structure including the supports, uprights, bracing and framework which support or are capable of supporting a sign.

~~DD~~LL. **Temporary Sign:** A sign which is erected or displayed for a limited period of time.

~~EE~~MM. **Traffic Directional Sign:** A sign which is erected by a governmental unit for the purpose of directing or guiding traffic.

~~FF~~. ~~**Internal Traffic Directional Sign:** A sign which is erected on private property by the owner of such property for the purpose of guiding vehicular and pedestrian traffic within his property. Such sign bears no advertising information.~~

~~NN~~. ~~**Wall Sign:** Any sign which is affixed to a wall of any building. A sign attached parallel to, but within two (2) feet of a wall, painted on the wall surface, or erected and confined within the limits of an outside wall of a building or structure, which is supported by such wall or building, and which displays one (1) sign surface.~~

~~GG~~OO. **Window Sign:** A building sign, pictures, symbol, or combination thereof that is placed inside a window or upon the window panes or glass and is visible from the exterior of the

window.

1380.034 Administration and Enforcement.

- A. Permits. Except as provided below, the owner or occupant of the premises on which a sign is to be displayed, or the owner or installer of such signs, shall file an application provided by the City Zoning Administrator for permission to display such sign. Sign Permits, Conditional Use Permits, or Interim Use Permits must be acquired for all existing, new, relocated, modified or redesigned signs as specified in this section, except those specifically exempted below. The content of the sign shall not be reviewed or considered in determining whether to approve or deny a sign permit.
- B. The applicant shall submit the following information with the application:
1. Names and addresses of the owners of the proposed sign and property.
 2. The legal description of the property where the sign will be placed.
 3. A complete set of plans showing the location, setbacks, elevation(s), size materials, and details of the sign to fully and clearly represent the construction and placement of the sign, and cost of the sign.
 4. The type of sign (i.e. wall sign, monument sign, etc.).
 5. Certification by the applicant indicating the application complies with all requirements of the sign ordinance.
 6. If the proposed sign is proposed to be located along a state trunk highway or interstate highway, the application shall be accompanied by proof that the applicant has obtained a permit from the state for the sign.
- C. ~~a complete description of the sign and a sketch showing its size, location, manner of construction and such other information as shall be necessary to inform the City Zoning Administrator of the kind, size, material, construction and location of the sign.~~ The City Zoning Administrator may approve Sign Permits for signs with up to two (2) sides upon completion of an inspection of the said sign by the City Building Inspector upon review. The maximum review period shall be no more than sixty (60) days from the receipt of the complete application, including applicable fee. If the permit is denied, the Zoning Administrator shall prepare a written notice describing the reason for denial and the applicant's appeal rights, and send it by certified mail, return receipt requested, to the applicant.
- D. All applications for signs of more than two (2) sides shall be reviewed by the Planning Commission and Council. ~~The applicant shall also submit the fee at the time of application.~~
- E. If a sign authorized by a permit has not been installed within ~~three (3) months~~ one hundred and eighty (180) days after the date of issuance of said permit, the permit shall become null and void.

1380.05 Appeals.

- A. A permit applicant or permit holder may appeal any order or determination made by the City Zoning Administrator or his deputies pursuant to this Ordinance by filing a notice of appeal with

the City Administrator requesting a hearing before the Planning Commission. The Planning Commission will hear:

1. Appeals where it is alleged that there is an error in any order, requirement, decision or determination made by the administrative officer in the enforcement of this Ordinance.

2. Requests for variances from the literal provisions of this Ordinance.

B. Upon completion of said public hearing, the Planning Commission will forward to the Newport City Council a recommendation on said appeal for final approval/disapproval.

All signs shall be constructed in accordance with the current Minnesota State Building Code and National Electric Code. To the extent that any conflict exists between those provisions and the provision of the City Code, to the extent the City Code provisions are more restrictive, they shall apply.

All signs utilizing electricity shall be subject to the State's current Electrical Code and electrical wiring shall be buried or concealed.

All sign structures shall be designed and constructed to withstand a wind pressure of not less than eighty (80) M.P.H., or as determined by the current Minnesota State Building Code.

Exemptions:1380.06 Exemptions

A. The exemptions permitted by this section shall apply only to the requirement of a permit and shall not be construed as excusing the installer of the sign, or the owner of the property upon which the sign is located, from complying with the other provisions of this Ordinance. No permit is required under this section for the following signs:

1. Signs erected by a governmental unit or public school district.

2. Memorial signs or tablets containing the name of the building, its use and date of erection when cut or built into the walls of the building and constructed of bronze, brass, stone or marble.

3-1. Signs which are completely within a building, are not on or within three (3) feet of a window and are not visible from the outside of said building.

4. A nameplate sign not exceeding two (2) square feet in area, and containing only the name of the resident, or title of person practicing a profession, in a Residential District.

5. Real estate signs pertaining to the lease or sale of real estate containing six (6) or less square feet.

6. Construction signs advertising the development or improvement of a property by builder, owner, contractor or other persons furnishing service, materials or labor, provided such sign is removed when the work is completed or upon issuance of a certificate of occupancy or completion, whichever occurs first.

2. Garage sale Signs, Signs that are six (6) square feet in area or less.

3. Non-commercial signs that comply with Minnesota Statutes 211B.045 or successor statutes.
4. Signs may be placed on parcels that are currently offered for sale providing such signs are not closer than 10 feet to any property line and shall not exceed six (6) square feet in area for single-family residential uses and thirty-six (36) square feet in area for multifamily residential, commercial, industrial or mixed uses. One sign shall be permitted for each street frontage.
5. Signs may be erected on parcels that are currently under construction for single-family or multiple-family residences. The plat of the development shall be recorded with the Washington County Recorder prior to the erection of a sign. Such signs are subject to the following standards:
 - a. Such signs shall not exceed one hundred (100) square feet in area.
 - b. Only one (1) such sign shall be erected on each road frontage with a maximum of three (3) such signs per project.
 - c. Such signs shall be removed when the project is eighty percent (80%) completed, sold or leased.
 - d. Such signs shall be located on the property which is for sale.
 - e. Signs for nonresidential property, multiple-family developments of four (4) or more dwelling units and single-family developments of four (4) or more dwelling units shall be located no closer than one hundred (100) feet to any residence not part of the project.
6. Back-lighted signs are permitted on the ends of bus shelters, and signs are permitted on benches at bus stops.

1380.087 - Violations and Fines.

- A. If the City Zoning Administrator or his deputies finds that any sign regulated by this Ordinance is prohibited as to size, location, content, type, number, height, or method of construction, or is unsafe, insecure or a menace to the public, or if any sign has been constructed or erected without a permit first being granted to the installer of said sign or to the owner of the property upon which said sign has been erected, or if the owner fails to properly maintain said sign in a safe, orderly condition at all times, including the replacement of defective parts, or is in violation of any other provisions of this Ordinance, the City Zoning Administrator shall give written notice of such violation to the owner or permittee thereof. If the owner or permittee fails to comply with the provision set forth in this Ordinance within ten (10) calendar days following receipt of said notice:
 1. **Nuisance.** Such sign shall be deemed to be a nuisance and may be abated by the City by proceedings taken under Minnesota Statutes, Chapter 429, and the cost of abatement, including administration expenses, may be levied as a special assessment against the property upon which the sign is located.
 2. **Penalty.** Failure to comply with the provisions of this ordinance shall be a misdemeanor.

- B. Any property owner that leases building space or land on and/or within their property has a responsibility to assist, as is applicable, in the enforcement of this section with their tenants.

1380.08 General Provisions Applicable to All Districts.

~~A. All signs shall be constructed in accordance with the current Minnesota State Building Code and National Electric Code. To the extent that any conflict exists between those provisions and the provision of the City Code, to the extent the City Code provisions are more restrictive, they shall apply. All signs shall be constructed in such a manner and of such material that they shall be safe and substantial, provided that nothing in this Code shall be interpreted as authorizing the erection or construction of any sign not now permissible under the Zoning or Building Codes of the City.~~

~~A.~~

~~B. All signs utilizing electricity shall be subject to the State's current Electrical Code and electrical wiring shall be buried or concealed.~~

~~C. All sign structures shall be designed and constructed to withstand a wind pressure of not less than eighty (80) M.P.H., or as determined by the current Minnesota State Building Code.~~

General Provisions Applicable to All Districts.

D. Freestanding Signs

1. Non-accessory freestanding and wall signs are prohibited in all districts, except in areas specially designated in this Ordinance.
2. The base or support structure for freestanding signs shall complement the design of the building and incorporate forty percent (40%) of brick, stone, decorative block, or similar substantial materials as approved by the Zoning Administrator. The base of the sign shall be at least seventy-five percent (75%) of the width of the sign from the ground to the bottom of the sign.
3. Freestanding signs along major thoroughfares (I494 and T.H. 61) shall be subject to a review by the Zoning Administrator. The focus of the review is to assure the quality of the sign with regard to design and materials - Section 1380.03, B. Furthermore, the Zoning Administrator will consider the signs' relationship to any architectural theme of existing or proposed structures in the area.

~~4. Freestanding signs shall be constructed with the base consisting of materials matching the building with said base at least seventy five percent (75%) of the width of the sign from the ground to the bottom of the sign. Any free-standing sign within twenty-five (25) feet of any intersection of street right-of-way lines and/or driveway entrances shall have vertical clearance for proper visibility by motorists on all affected roadways.~~

~~B. All signs shall be constructed in such a manner and of such material that they shall be safe and substantial, provided that nothing in this Code shall be interpreted as authorizing the erection or construction of any sign not now permissible under the Zoning or Building Codes of the City.~~

~~C. The Building Inspector and Zoning Administrator, in granting permits for illuminated signs, shall specify the hours during which the same may be kept lighted to prevent the creation of a~~

~~nuisance. All illuminated signs designed to reflect light off of a light source shall have a shielded light source that will prevent the direct view of that light source from any passing roadway or residence at grade. Any illuminated sign located within fifty (50) feet of a lot line of a Residential District shall be diffused or indirect so as not to direct rays of light into adjacent residences. Any dynamic display sign located within fifty (50) feet of a lot line of a Residential District shall comply with the requirements of Section 1380.03. O and shall be turned off or programmed to go blank between the hours of 10 p.m. and 6 a.m., daily. All illuminated signs in Business and Industry Districts that are in close proximity to Residential Districts and residential property located in a Business, Commercial and Industrial District shall be designed so as to illuminate the sign and not residential property. All dynamic display signs, regardless of zoning district, shall comply with the requirements of Section 1380.03, items N and O.~~

~~D.E. _____ No sign, other than public traffic controls, direction or street name signs, or campaign yard signs, shall be erected or temporarily within any street right-of-way or upon any public easements. Campaign yard signs may be located in a commercial, industrial or residential lot not less than five (5) feet from the curb, lot line or edge of street, and shall meet the requirements identified in Subsection I, below.~~

~~E.F. A permit for a sign to be located within fifty (50) feet of any street or highway regulatory or warning sign, or of any traffic sign or signal, or of any crossroad or crosswalk, will be issued only if:~~

- ~~1. The sign will not interfere with the ability of drivers and pedestrians to see any street or highway sign, or any traffic sign or signal, or any crossroad or crosswalk, and~~
- ~~2. The sign will not distract drivers nor offer any confusion to any street or highway sign, or any traffic sign or signal. The burden of establishing whether a particular sign configuration will not disturb or confuse drivers will be on the applicant seeking to construct the sign.~~

~~F. Any free standing sign within twenty five (25) feet of any intersection of street right of way lines and/or driveway entrances shall have vertical clearance for proper visibility by motorists on all affected roadways.~~

~~G. All applications for signs of more than two (2) sides shall be reviewed by the Planning Commission and Council.~~

~~H. _____~~

~~I. Campaign yard signs shall be regulated by the provisions of Minnesota Statutes, Chapter 211B.045. "In any municipality, whether or not the municipality has an ordinance that regulates the size or number of noncommercial signs, all noncommercial signs of any size may be posted in any number from August 1 in a state general election year until ten days following the state general election."~~

~~J. Temporary signs adjacent to the public right of way for the purpose of selling or leasing individual lots or buildings or a sign promoting the construction or remodeling of a property or building shall be permitted, provided:~~

- ~~1. Such signs shall not exceed six (6) square feet for residential property and thirty two (32) square feet for nonresidential property, multiple family developments of four (4) or more dwelling units and single family developments of four (4) or more dwelling units.~~

~~1380 Only one (1) such sign is permitted per street frontage upon which the property abuts.~~

- ~~3.—Such sign shall be removed within seven (7) days following the lease or sale or completion of the construction or remodeling project.~~
- ~~4.—Signs for nonresidential property, multiple family developments of four (4) or more dwelling units and single family developments of four (4) or more dwelling units shall be located no closer than one hundred (100) feet to any residence not part of the project.~~

~~The Building Inspector and Zoning Administrator, in granting permits for illuminated signs, shall specify the hours during which the same may be kept lighted to prevent the creation of a nuisance. All illuminated signs designed to reflect light off of a light source shall have a shielded light source that will prevent the direct view of that light source from any passing roadway or residence at grade. Any illuminated sign located within fifty (50) feet of a lot line of a Residential District shall be diffused or indirect so as not to direct rays of light into adjacent residences. Any dynamic display sign located within fifty (50) feet of a lot line of a Residential District shall comply with the requirements of Section 1380.03. O and shall be turned off or programmed to go blank between the hours of 10 p.m. and 6 a.m., daily. All illuminated signs in Business and Industry Districts that are in close proximity to Residential Districts and residential property located in a Business, Commercial and Industrial District shall be designed so as to illuminate the sign and not residential property. All dynamic display signs, regardless of zoning district, shall comply with the requirements of Section 1380.03., items N and O.~~

- ~~1.—Portable, dynamic display signs are not allowed as permanent signs in any District.~~
- ~~2.—Any free standing sign within twenty five (25) feet of any intersection of street right of way lines and/or driveway entrances shall have vertical clearance for proper visibility by motorists on all affected roadways.~~
- ~~3.—~~
- ~~4.—All applications for signs of more than two (2) sides shall be reviewed by the Planning Commission and Council.~~
- ~~5.—~~
- ~~6.—The following standards shall apply to image duration, transition, and other characteristics of signs with dynamic display:

 - ~~a.—An interim use permit is required for dynamic display signs that is a one-time permit and non-transferable.~~
 - ~~b.—Signs with dynamic display that are oriented toward the public right of way shall not include moving video images.~~
 - ~~c.—Business and identification signs with dynamic display may either have stable text and/or stable images, or they may have scrolling text and/or scrolling images.—Signs with dynamic display which contain stable text and/or stable images may not change their text or image more than once every eight (8) seconds.—Signs with dynamic display which contain scrolling text and/or scrolling images may not scroll at a rate faster than one (1) word per second, where words contain an average of five (5) characters each.~~
 - ~~d.—For stable text and/or stable images, the transition from one static display to another must be direct and immediate without any special effects except for fading and dissolving that takes less than one (1) second.~~
 - ~~e.—Signs with dynamic display shall not emit sound except of those at drive through sales and services.~~~~

~~f. Other modes of displaying messages are prohibited. Modes which cause the message to flash are prohibited.~~

~~g. All dynamic display signs shall come equipped with automatic dimming technology that automatically adjusts the sign's brightness in direct correlation in natural ambient light conditions. Between dusk and dawn, the sign shall not exceed a brightness level of five hundred (500) nits. At no time shall any dynamic display sign exceed an illumination level of 0.3 foot candles above ambient light as measured using a foot candle (Lux) meter at a preset distance depending on sign area, measured as follows:~~

Area of Sign sq. ft.	Measurement Distance (ft.)
10	32
15	39
20	45
25	50
30	55
35	59
40	63
45	67
50	71

~~* For signs with an area in square feet other than those specifically listed in the table (i.e., 12 sq ft, 400 sq ft, etc), the measurement distance may be calculated with the following formula:~~

~~Measurement Distance = the square root of the area of sign in Sq. Ft. x 100~~

~~Prior to permitting any dynamic display sign, the applicant shall submit a signed letter from the dynamic display sign manufacturer certifying that the dynamic display sign has been calibrated to comply with the requirements of this Section. The portion of any dynamic or illuminated sign that is used for the conveyance of any message will be included within the overall size of the sign. For purposes of this section, the permitted size of a dynamic or illuminated sign shall be calculated so as to include the full height and width of the sign structure immediately surrounding the message area.~~

~~K. Bench signs are permitted in all districts at MTC bus stops.~~

~~L. Back lighted signs are permitted on the ends of bus shelters.~~

~~M. Public institution and/or Church directional signs shall be permitted in all districts provided the total area of such sign shall not exceed seven (7) square feet."~~

~~N. Canopies and marquees shall be considered to be an integral part of the structure to which they are accessory. Signs may be attached to a canopy or marquee but such structure shall not be considered as part of the wall area and thus shall not warrant additional sign area.~~

~~O. Signs advertising garage, yard, or similar household sales shall be removed within seven (7) days after the sale.~~

~~K. The portion of any dynamic or illuminated sign that is used for the conveyance of any message will be included within the overall size of the sign. For purposes of this section, the permitted~~

~~size of a dynamic or illuminated sign shall be calculated so as to include the full height and width of the sign structure immediately surrounding the message area.~~

~~P. Signs located on a window or on the interior of a building within three (3) feet of a window and clearly visible from the outside of building shall be regulated by this section. Said signs shall not exceed fifty percent (50%) of the window area and shall be designed, constructed, and maintained to be professional looking.~~

~~Q. Signs which are located on the interior of a building, are not on or within three (3) feet of a window and are not visible from the outside of said building shall be exempt from the provisions of this Ordinance and shall not require permits or payment of fees.~~

~~L.G. _____~~ Roof signs shall be prohibited in all districts.

~~M.H. _____ Except as otherwise provided for in this Section, no sign may be placed on any property if the sign does not advertise a product or service located or available on that property. Off-premises signs, except permitted Pylon signs and Billboards in business, commercial, and industrial districts, are prohibited in all districts.~~

1380.049 District Regulations.

~~A. In addition to those signs permitted in all districts, t~~The following signs are permitted in each specific district and shall be regulated as to size, location and character according to the requirements herein set forth:

1. Residential Districts:

~~b. Non-commercial signs shall comply with Minnesota Statutes 211B.045 or successor statutes.~~

~~a. Signs may be placed on parcels that are currently offered for sale providing such signs are not closer than 10 feet to any property line and shall not exceed six (6) square feet in area for single-family residences or thirty-six (36) square feet in area for multi-family residences. One sign shall be permitted for each street frontage.~~

~~b. Signs may be erected on parcels that are currently under construction for single-family or multiple-family residences in compliance with the requirements of Section 1380.04.~~

~~Nameplate Signs: One (1) sign for each dwelling unit, not greater than two (2) square feet in area, indicating the name and/or address of the occupant.~~

~~Institutional and Recreational Signs: One (1) sign or bulletin board per street frontage for public institutional use; for recreational use in residential districts, such sign or bulletin board shall not exceed twenty four (24) square feet in area nor shall it be placed closer than ten (10) feet to any edge of street line nor shall it be placed in a location that would interfere with the safe movement of traffic.~~

~~Area Identification Signs: One (1) sign per each major development, not to exceed twenty four (24) square feet in area.~~

~~Temporary Signs: According to 1380.03.~~

~~c. The maximum area for a single sign (except as noted in items b. and c. above) within residential districts shall be the following:~~

District	Maximum area of single sign	Total area of all signs
R-1, R-1A, R-2	8 square feet per surface	16 square feet
R-3	12 square feet per surface	24 square feet

~~a.d.~~ ~~The M~~maximum ~~H~~height of Free-Standing Signs ~~shall be :-E~~eight (8) feet.

~~e.~~ ~~Lighting:~~ Lighting must be indirect or diffused ~~and comply with the requirements of this Zoning Ordinance.~~ Dynamic display signs ~~shall comply with the requirements in Section 1380.03. O. Dynamic display signs shall comply with the requirements in Section 1380.03. N and O.~~ are not permitted in Residential Districts.

~~b.f.~~ ~~The following types of signs are not permitted in residential zoning districts or on parcels with residential uses in all other districts:~~ Awning Signs, Canopy Signs, Dynamic Display Signs, Flashing Signs, Marquee Signs, Pole Signs, and Pylon Signs.

~~i.~~ ~~Home Occupation Signs:~~ Any occupant of a residential unit engaged in a home occupation, may have one (1) sign not exceeding three (3) square feet.

2.1. Business/Commercial/Industrial Districts:

a. Wall Signs: One (1) wall sign for each street frontage shall be permitted on a building for each business located within such building. The total area of all wall signs affixed to a building wall shall not exceed twenty percent (20%) of the total area of that wall. No individual wall sign shall exceed one hundred and fifty (150) square feet.

A wall sign shall not project more than eighteen (18) inches from the wall to which the sign is to be affixed. Furthermore, wall mounted signs shall not exceed the roof line on any building.

~~b.c.~~ Freestanding Signs: One (1) freestanding sign is permitted for each building for each street frontage.

The total area of a freestanding sign for a building having one (1) street frontage shall not exceed eighty (80) square feet. Where a building has two (2) or more street frontages, each permitted freestanding sign in excess of one (1) shall be no greater than one-half (1/2) the area of the first sign.

No part of a freestanding sign shall be closer than ten (10) feet to the front property line or exceed thirty-five (35) feet in height. The height shall be measured from the base of the sign or grade of the nearest adjacent roadway, whichever is lower, to the top edge of the said sign.

~~e.d.~~ Bulletin Signs: Bulletin signs may have individual face areas of up to fifty percent (50%) of the area of the display surface area of the ~~business' identification or~~ free-standing sign. Bulletin signs which are not wall-mounted must have a minimum elevation of ten (10) feet from the base of the sign or grade of the nearest adjacent roadway, whichever is lower, to the bottom edge of the said sign.

e. Portable Signs: One (1) portable bulletin sign up to fifteen (15) square feet may be displayed only during the merchant's business hours, with a permit. Such signs shall be

located within the width of the storefront to which it is related and shall be additionally regulated by ~~1380.04, 2. e. Temporary Signs~~ the requirements for Temporary Signs in this Section.

~~d.f. Multi-tenant Monument Signs: One monument sign shall be permitted for each multi-tenant building provided the surface area of the sign does not exceed 100 square feet per side, 15 feet in height, and is setback in no case less than 20 feet from the property lines. The area may be increased to maximum of 150 square feet per side for developments of over 20 acres.~~

e.g. Pylon Signs: Retail and service establishments on property abutting an interstate freeway or state highway right-of-way may erect one (1) pylon sign for each building and/or building owned by a corporate entity or business. Said sign shall not exceed one hundred fifty (150) square feet of display surface area and shall be in addition to their one (1) free-standing sign or wall sign.

The minimum allowance distance of a pylon sign to an interstate right-of-way is fifty (50) feet, with a maximum height of thirty-five (35) feet.

1. Application may be made to the city for a variance to increase the maximum pylon sign height on a lot having the following characteristics.
 - a. The lot abuts the right-of-way of an interstate freeway or state highway or abuts a frontage road immediately adjacent to an interstate freeway or state highway.
 - b. The lot does not have and is not permitted to have directional signage on the interstate freeway or state highway directing the public to the subject lot.
2. To be eligible for a variance to increase sign height, the application shall be accompanied by the following drawings drawn to scale:
 - a. A site plan showing the location of the proposed sign, property lines of the subject property, road alignments of adjacent streets and highways and the locations of any cross sectional drawings necessary to analyze the request.
 - b. Cross sectional drawings necessary to analyze the request showing the entire traveled surface of the freeway or state highway, any retaining walls or fences, any frontage roads, and the proposed sign location.
3. The Zoning Administrator **may** approve an application for a variance to increase pylon sign height which meets the criteria set forth in 1380.04,A.,2.,d.,1) where the proposed sign plan meets each of the following requirements:
 - a. The sign is no higher than necessary to permit the bottom edge of the sign face to be visible from at least fifty percent (50%) of the traveled surface of the interstate or state highway.
 - b. The top of the sign face is no more than twelve (12) feet above the bottom of the sign face.
 - c. The location of the sign is such that the increase in sign height is minimized.

d. The sign face shall not exceed one hundred fifty (150) square feet.

~~f.h.~~ Temporary Signs: Temporary ~~special event~~ signs may be displayed upon issuance of a permit, for not more than thirty (30) calendar days, and not more than two (2) times each year. Such signs shall include: banners, pennants, portable bulletin signs, streamers, and other signs approved by the City. The design and construction of all said signs shall be professional looking and not be allowed to become torn or weathered.

No temporary sign or combination of temporary signs may exceed eighty (80) square feet in area.

~~All signs, including temporary special event signs, which are located on the interior of a building within three (3) feet of a window and clearly visible from the outside of said building shall not exceed fifty percent (50%) of the window area.~~

Temporary ~~special event~~ signs such as flying signs, air inflated devices, and search lights shall not be allowed at any time in any zoning district.

~~g.i.~~ Flags: An individual business and institution may have no more than three (3) flags or forty-five (45) square feet of flag surface displayed at any one time.

~~h.j.~~ Illuminated Signs: The Building Inspector and Zoning Administrator, in granting permits for illuminated signs, shall specify the hours during which the same may be kept lighted to prevent the creation of a nuisance. All illuminated signs designed to reflect light off of a light source shall have a shielded light source that will prevent the direct view of that light source from any passing roadway or residence at grade. Any illuminated sign located within fifty (50) feet of a lot line of a Residential District shall be diffused or indirect so as not to direct rays of light into adjacent residences.

i. Dynamic Display Signs. Any dynamic display sign located within fifty (50) feet of a lot line of a Residential District shall comply with the requirements of this section, and shall be turned off or programmed to go blank between the hours of 10 p.m. and 6 a.m., daily.

All Dynamic Display Signs in Business and Industry Districts that are in close proximity to Residential Districts and residential property located in a Business, Commercial and Industrial District shall be designed so as to illuminate the sign and not residential property. All dynamic display signs, regardless of zoning district, shall comply with the following:

1. Portable, dynamic display signs are not allowed as permanent signs in any District.
2. The following standards shall apply to image duration, transition, and other characteristics of signs with dynamic display:
3. An interim use permit is required for dynamic display signs that is a one-time permit and non-transferable.
4. Signs with dynamic display that are oriented toward the public right of way shall not include moving video images.
5. Business and identification signs with dynamic display may either have stable text and/or stable images, or they may have scrolling text and/or scrolling images. Signs

with dynamic display which contain stable text and/or stable images may not change their text or image more than once every eight (8) seconds. Signs with dynamic display which contain scrolling text and/or scrolling images may not scroll at a rate faster than one (1) word per second, where words contain an average of five (5) characters each.

6. For stable text and/or stable images, the transition from one static display to another must be direct and immediate without any special effects except for fading and dissolving that takes less than one (1) second.
7. Signs with dynamic display shall not emit sound except of those at drive-through sales and services.
8. Other modes of displaying messages are prohibited. Modes which cause the message to flash are prohibited.
9. All dynamic display signs shall come equipped with automatic dimming technology that automatically adjusts the sign’s brightness in direct correlation in natural ambient light conditions. Between dusk and dawn, the sign shall not exceed a brightness level of five hundred (500) nits. At no time shall any dynamic display sign exceed an illumination level of 0.3 foot candles above ambient light as measured using a foot candle (Lux) meter at a preset distance depending on sign area, measured as follows:

Area of Sign sq. ft.	Measurement Distance (ft.)
10	32
15	39
20	45
25	50
30	55
35	59
40	63
45	67
50	71

** For signs with an area in square feet other than those specifically listed in the table (i.e., 12 sq ft, 400 sq ft, etc), the measurement distance may be calculated with the following formula:*

Measurement Distance = the square root of the area of sign in Sq. Ft. x 100

10. Prior to permitting any dynamic display sign, the applicant shall submit a signed letter from the dynamic display sign manufacturer certifying that the dynamic display sign has been calibrated to comply with the requirements of this Section.
 11. The portion of any dynamic or illuminated sign that is used for the conveyance of any message will be included within the overall size of the sign. For purposes of this section, the permitted size of a dynamic or illuminated sign shall be calculated so as to include the full height and width of the sign structure immediately surrounding the message area.
- j. Canopy and Marquee Signs: Canopies and marquees shall be considered to be an integral

part of the structure to which they are accessory. Signs may be attached to a canopy or marquee but such structure shall not be considered as part of the wall area and thus shall not warrant additional sign area.

- k. Window Signs: Signs located on a window or on the interior of a building within three (3) feet of a window and clearly visible from the outside of said building shall be regulated by this section. Said signs shall not exceed fifty percent (50%) of the window area and shall be designed, constructed, and maintained to be professional looking.

- l. Residential Uses in Business, Commercial and Industrial Districts: Any residential building located in a Business District shall meet the sign requirements of 1380.04, 1. (Residential Districts).

1. Mixed Use Districts:

- a) Any residential building in a Mixed Use District shall meet the sign requirements of 1380.049 A-1. (Residential Districts ~~R-3~~).
- b. Any business/commercial building in a Mixed Use District shall meet the sign requirements of 1380.049 A 2. (Business/Commercial/Industrial Districts).

1380.0510 Billboards.

- A. It shall be unlawful to erect in the city a billboard without first having obtained a license therefore. Application for the license shall be made to the Zoning Administrator upon a form furnished by him or her and accompanied by a fee as established from time to time by the Council, which license fee shall be pro-rated so as to have the license expire on January 31st of each year. Each license shall be issued for a period of one year, except that in the first year of issuance a license shall be valid for that portion of a year ending the following January 31.
- B. Every billboard located in the city upon any thoroughfare shall be located at least three thousand (3,000) feet apart from another billboard and may not, in any event, be located nearer than one thousand, five hundred (1,500) feet from any road or highway intersection.
- C. A billboard may only be erected in an I-1 Light Industrial District, shall not exceed five hundred fifty (550) square feet, shall be no higher than twenty-five (25) feet above existing grade level, shall be set back at least ten (10) feet from any property lines, and shall not have flashing lights or moving parts of any kind.

The minimum allowable distance of a billboard to any building shall be twenty-five (25) feet, to any Residential District five hundred (500) feet, and no portion of any billboard shall occupy air space above any driveway or parking area.

- D. Every billboard shall be repainted by the licensee at least once every two (2) years.
- E. There shall be filed with the City Clerk-Administrator a perpetual bond in favor of the city in the penal sum of two hundred and fifty and no/100 (\$250.00) dollars for each billboard. The bond shall be issued by sureties in a form approved by the City Attorney. The condition of the bond shall be full compliance with this Section.
- F. A billboard may be an electronic or illuminated sign. Any such billboard, however, must meet the additional requirements imposed upon such signs as are otherwise stated in this Section.

1380.11 Sign Maintenance.

- A. All signs, billboards, and other advertising structures shall be maintained in good condition and the area around them shall be kept free from debris, weeds, and other objectionable material.

1380.06 Administration and Enforcement.

~~D. **Permits.** Except as provided below, the owner or occupant of the premises on which a sign is to be displayed, or the owner or installer of such signs, shall file an application provided by the City Zoning Administrator for permission to display such sign. Permits must be acquired for all existing, new, relocated, modified or redesigned signs except those specifically excepted below. The applicant shall submit with the application a complete description of the sign and a sketch showing its size, location, manner of construction and such other information as shall be necessary to inform the City Zoning Administrator of the kind, size, material, construction and location of the sign. The City Zoning Administrator may approve Sign Permits upon completion of an inspection of the said sign by the City Building Inspector. The applicant shall also submit the fee at the time of application.~~

~~If a sign authorized by a permit has not been installed within three (3) months after the date of issuance of said permit, the permit shall become null and void.~~

~~E. All signs shall be constructed in accordance with the current Minnesota State Building Code and National Electric Code. To the extent that any conflict exists between those provisions and the provision of the City Code, to the extent the City Code provisions are more restrictive, they shall apply.~~

~~F. All signs utilizing electricity shall be subject to the State's current Electrical Code and electrical wiring shall be buried or concealed.~~

~~G. All sign structures shall be designed and constructed to withstand a wind pressure of not less than eighty (80) M.P.H., or as determined by the current Minnesota State Building Code.~~

~~H. **Exemptions.** The exemptions permitted by this section shall apply only to the requirement of a permit and shall not be construed as excusing the installer of the sign, or the owner of the property upon which the sign is located, from complying with the other provisions of this Ordinance. No permit is required under this section for the following signs:~~

~~7. Signs erected by a governmental unit or public school district.~~

~~8. Memorial signs or tablets containing the name of the building, its use and date of erection when cut or built into the walls of the building and constructed of bronze, brass, stone or marble.~~

~~9. Signs which are completely within a building, are not on or within three (3) feet of a window and are not visible from the outside of said building.~~

~~10. A nameplate sign not exceeding two (2) square feet in area, and containing only the name of the resident, or title of person practicing a profession, in a Residential District.~~

~~11. Real estate signs pertaining to the lease or sale of real estate containing six (6) or less square feet.~~

~~12. Construction signs advertising the development or improvement of a property by builder, owner, contractor or other persons furnishing service, materials or labor, provided such sign is removed when the work is completed or upon issuance of a certificate of occupancy or completion, whichever occurs first.~~

~~13. Garage sale Signs.~~

~~1380.08 Violations and Fines.~~

~~C. If the City Zoning Administrator or his deputies finds that any sign regulated by this Ordinance is prohibited as to size, location, content, type, number, height, or method of construction, or is unsafe, insecure or a menace to the public, or if any sign has been constructed or erected without a permit first being granted to the installer of said sign or to the owner of the property upon which said sign has been erected, or if the owner fails to properly maintain said sign in a safe, orderly condition at all times, including the replacement of defective parts, or is in violation of any other provisions of this Ordinance, the City Zoning Administrator shall give written notice of such violation to the owner or permittee thereof. If the owner or permittee fails to comply with the provision set forth in this Ordinance within ten (10) calendar days following receipt of said notice:~~

~~1. Nuisance. Such sign shall be deemed to be a nuisance and may be abated by the City by proceedings taken under Minnesota Statutes, Chapter 429, and the cost of abatement, including administration expenses, may be levied as a special assessment against the property upon which the sign is located.~~

~~2. Penalty. Failure to comply with the provisions of this ordinance shall be a misdemeanor.~~

~~D. Any property owner that leases building space or land on and/or within their property has a responsibility to assist, as is applicable, in the enforcement of this section with their tenants.~~

~~1380.09 Appeals.~~

~~A permit applicant or permit holder may appeal any order or determination made by the City Zoning Administrator or his deputies pursuant to this Ordinance by filing a notice of appeal with the City Administrator requesting a hearing before the Planning Commission. The Planning Commission will hear:~~

~~A. Appeals where it is alleged that there is an error in any order, requirement, decision or determination made by the administrative officer in the enforcement of this Ordinance.~~

~~B. Requests for variances from the literal provisions of this Ordinance.~~

~~Upon completion of said public hearing, the Planning Commission will forward to the Newport City Council a recommendation on said appeal for final approval/disapproval.~~

~~1380.102 Nonconforming Signs.~~

A. All non-conforming signs shall be brought into compliance within sixty (60) days of a change in the principle business use.

B. Any business or property with signs not in compliance with the standards of this Section, but which were in place legally on the date of the adoption of this Code, may retain such signs as

legal non-conforming uses. Such signs may be maintained normally. A significant change in the size, shape, design, or materials of the sign, as determined by the Zoning Administrator, shall be in conformance with all standards of this Section.

- C. Any nonconforming temporary or portable sign existing at the time of adoption of this Ordinance shall be made to comply with the requirements set forth herein or shall be removed within one (1) year after the adoption of this Ordinance.

1380.113 Sign Materials and Construction

- A. Nonstructural Trim. Nonstructural trim and portable display surfaces may be of wood, metal, approved plastics, or any combination thereof, provided that Subsection 1380.10 is satisfied where applicable.

B. ~~1380.12~~ Anchorage.

1. Members supporting unbraced signs shall be so proportioned that the bearing loads imposed on the soil in either direction, horizontal or vertical, shall not exceed the safe values. Braced ground signs shall be anchored to resist the specified wind or seismic load acting in any direction. Anchors and supports shall be designed for safe bearing loads on the soil and for an effective resistance to pull-out amounting to a force twenty-five (25) percent greater than the required resistance to overturning. Anchors and supports shall penetrate to a depth below ground greater than that of the frost line.
2. Portable ground signs supported by frames or posts rigidly attached to the base shall be so proportioned that the weight and size of the base shall be adequate to resist wind pressure.
3. Signs attached to masonry, concrete, or steel shall be safely and securely fastened thereto by means of metal anchors, bolts, or approved expansion screws of sufficient size and anchorage to support the loads applied.
4. No wooded blocks or plugs, or anchors with wood used in connection with screws or nails, shall be considered proper anchorage, except in the case of signs attached to wood framing.
5. No anchor or support of any sign shall be connected to, or supported by, an unbraced parapet wall unless such wall is designed in accordance with the requirements for parapet walls specified for seismic zones in the then adopted Uniform Building Code.

- C. ~~1380.13~~ Display Surfaces. Display surfaces in all types of signs may be made of metal, glass or approved plastics, provided Subsection 1380.10 is satisfied where applicable.

D. ~~1380.14~~ Glass and Plastic Thickness and Area Limitations.

1. Sections of approved plastics on wall signs shall not exceed one hundred fifty (150) square feet in area.
2. Sections of approved plastics on signs other than wall signs may be greater than one hundred fifty (150) square feet in area if allowed by the area regulations of the Zoning District, and if approved by the Building Inspector.
3. Sections of approved plastics on wall signs shall be separated three (3) feet laterally and six (6) feet vertically by the required exterior wall construction. Sections of approved plastics on

signs other than wall signs may not be required to be separated if approved by the Building Inspector.

4. Glass thickness and area limitations shall be as follows:

Any Dimension (in inches)	Minimum Area (in square inches)	Thickness of Glass (in inches)	Type of Glass
30	500	1/8	Plain, Plate or Wired
45	700	3/16	Plain, Plate or Wired
144	3600	1/4	Plain, Plate or Wired
Over 144	Over 3600	1/4	Wired Glass

E.
~~1380.15 Use of Approved Plastics~~**Plastic Materials.** The Building Inspector shall require that sufficient technical data be submitted to substantiate the proposed use of any plastic material and, if it is determined that the evidence submitted is satisfactory for the use intended, he or she may approve its use.

1380.164 Electric Signs.

- A. Electric signs shall be constructed of noncombustible materials, except as approved by the Building Inspector.
- B. The enclosed shell of electric signs shall be watertight, excepting that service holes fitted with covers shall be provided into each compartment of such signs.
- C. Electrical equipment used in connection with display signs shall be installed in accordance with all statutes, code provisions, ordinances, and regulations regulating electrical installations.
- D. Every electric sign shall have painted on the sign, or attached in permanent fashion, the name of the sign erector and date of erection. The name and date shall be of sufficient size and contrast to be readable from a reasonable distance. Failure to provide the name and date shall be grounds for rejection of the sign by the Building Inspector.