

November

Rock Island Planning Commission

Regular Meeting

November 2, 2010

5:15 P.M.

1. Roll Call.
2. Approval of Minutes of the regular meeting of September 7, 2010.
3. Elsberg Second Addition: Two-lot subdivision with variances at 3700 11th Street
Elsberg Second Addition Final Plat is a two-lot minor subdivision located at 3700, 3704 and 3708 11th Street – This is a revision of the plat originally approval on September 7th.
4. Other Business – Digital Sign Webinar
5. Adjournment

The human eye can distinguish 10 billion colors.

MINUTES OF THE
ROCK ISLAND CITY PLANNING COMMISSION
Regular Meeting September 7, 2010 5:15 P.M.

| | | |
|-------------------|-----------------------|----------------------------|
| (x) Mike Creger | (x) Jason Lopez | (x) Bruce Peterson |
| (x) Ed Hanna | (x) Tim Meegan | (x) Lorian Swanson |
| (x) Ted Johnson | (x) Norm Moline | () Berlinda Tyler-Jamison |
| (x) David Levin | (x) Diane Oestreich | |

Staff Present: Alan Carmen, Alan Fries and Doris Quigley

Chairman Levin called the meeting to order at 5:20 p.m.

Procedural Explanation: Chairman Levin explained the procedures for conducting the public hearing.

Approval of Minutes: Approval of Minutes of the regular meeting of August 3, 2010. Commissioner Oestreich moved to approve the minutes as written. Commissioner Meegan seconded the motion and it carried unanimously.

Case #2010-7- Request for approval for Riverfront Corridor Overlay District site plan review in a B-3 (community business) district for 2408 4th Avenue.

Alan Fries presented the staff report.

Mandus Group/Spirit Partners has filed an application for a Riverfront Corridor Overlay District site plan review for a building expansion at 2408 4th Avenue. The applicant proposes to expand the existing consulting service office building by constructing an approximate 7,385-square foot warehouse and light-assembly area addition and a 45-space parking lot to the east and south of the existing office structure.

The property measures 302' x 156' x 237' x 42' x 65' x 114' (approximately 43,686 square feet). The site consists of the existing Mandus Group/Spirit Partners office building and development site. To the north is the proposed Jackson Square residential development, zoned PUD; to the east and south are commercial and industrial uses, zoned B-3; to the west is a vacant site undergoing environmental remediation, zoned B-3.

Board of Zoning Appeals Case #2008-03 - Request for temporary use for parking on a gravel surface was approved. The Comprehensive Plan identifies the general commercial land use for the site.

The site has access to 4th Avenue and 25th Street. The site plan identifies a new access point off 4th Avenue and a second access point off 25th Street. The site is flat and slightly above street level.

The proposed addition will meet the building setbacks for the B-3 zoning district (which is 20-foot front yard and ten-foot rear yard). The site plan identifies a 108-foot east front yard and a 55.5-foot north front yard setback. The south rear yard will be in line with the south façade of the existing office building, which has a 45.5-foot rear yard setback. The entire structure (existing and new addition) will cover approximately 34 percent of the site.

The Zoning Ordinance requires one space for every 250-square feet of office area and two spaces per 1,000-square feet of warehouse area. The building floor plan identifies approximately 2,600-square feet of office floor area, which would require ten parking spaces and approximately 8,740-square feet of warehouse/shop space, which would require nine parking spaces. Total parking requirements for the use is 19 spaces. The site plan identifies parking for 45 vehicles.

The site is served by an eight-inch diameter water line on 4th Avenue (there is also a force main along 24th Street from the water intake facility to the north of the site). Sanitary sewer service is located along combination lines along 4th Avenue and 25th Street. Storm water detention areas have not yet been identified. The location and specific calculations to meet the City's Stormwater Ordinance will need to be provided to the Public Works Department.

The site plan identifies several "islands" where canopy trees and other landscaping will be located. Four Red Maple canopy trees will be located along 4th Avenue and three Red Maple trees will be located along 25th Street. Two additional Red Maple trees will be located along the south perimeter of the parking lot. Additional bush plantings are also identified in these island areas.

The proposed development will be the first phase of two-phase development on the city block. Phase One investment is estimated at \$950,000. The second phase of the entire development includes the purchase and renovation of the Rock Island Register Company structure to the south for additional space for the applicant and a portion available for lease to other businesses. Short term investment in Phase Two (next five years) is estimated at \$300,000, however, this investment could increase significantly if tenant space is occupied. Assuming a build-out cost of \$100 per square foot, at full development the Phase Two investment could approach \$2.5 to \$3 million. The Phase One project is expected to create 30 jobs and the Phase Two project is also expected to create 30 jobs.

The site will have adequate parking for the existing office area and the proposed expanded uses. Access is adequate and there are enough canopy trees to meet the Ordinance landscape requirement. Due to the narrowness of the parking area there is not adequate room to provide a ten foot wide landscape edge, but the island area concept is adequate. Staff believes that the site plan meets the standards of the Riverfront Corridor Overlay District in terms of property size, compatibility, site planning, open space, and traffic.

Staff recommends approval of the final Riverfront Corridor Overlay Site Plan because the proposed expansion of the structure and parking area are attractive, functional and well planned design for the proposed office/warehouse/light-assembly development that will have adequate access, parking and landscaping that meets the standards for the Riverfront Corridor Overlay District.

Chairman Levin asked for questions from the Commissioners for Mr. Fries.

Commissioner Peterson asked if the aerial view showed an overlap between the subject site and the site to the south.

Mr. Fries replied that the appearance of an overlap was caused by the projection of the lot lines in the map and that there is no overlap on the sites.

As there were no other questions for Mr. Fries, Chairman Levin invited the applicant to come forward.

Mark Miller, Bracke-Hayes-Miller-Mahon Architects , 1465 41st Street, Moline, addressed the Commission. He stated that the stormwater plans had been submitted and approved. There will be about 475 lineal feet of underground storm pipe due to the lack of surface area to accommodate a water retention area.

Chairman Levin asked for questions from the Commissioners for the applicant.

Commissioner Oestreich asked about the need for the larger number of parking spaces, and commented that it is not usual to have all the same variety of trees on the site due to the possibility of disease destroying all of them at one time. She also stated that the miscanthus sinensis grass plants are considered to be invasive.

Mr. Miller replied that the Phase I addition would add 30 new employees and the parking would be for them and that the Zoning Ordinance sets minimum standards. He commented that the red maple trees were very hardy in this area and chosen for their appearance. The ornamental grass will be grown in the restrictive confines of the islands and it will be difficult for the plant to spread from that environment as they spread by runners.

Commissioner Peterson asked about the siding material for the new addition, commenting on the attractive appearance of the existing building.

Mr. Miller said that the new addition would be a pre-engineered building, sided with a metal flat panel siding in a tan palette. He also said that the use of a single-sloped roof, the appearance would not be that of a normal pre-fab building.

Commissioner Moline asked if this site improvement would benefit from the improvement of 25th Street.

Mr. Miller said that the street improvement would be a welcome upgrade.

Mr. Carmen added that there will be Tax Increment Funding money for this purpose and that 25th Street would be on the 2011 Capital Improvements Plan.

As there were no additional questions for the applicant and no others in the audience waiting to speak, Chairman Levin opened the floor for discussion by the Commissioners.

Commissioner Moline moved that the request be approved as recommended by staff. Commissioner Johnson seconded the motion.

Chairman Levin called for the motion and it passed on a unanimous vote.

The recommendation will be presented to City Council on Monday, September 13, 2010 at 6:45 p.m.

Review of Elsberg Second Addition, two-lot subdivision with variances at 3700 11th Street.

Alan Fries presented the staff report.

The Elsberg Second Addition Final Plat is a two-lot minor subdivision located at 3700, 3704 and 3708 11th Street, zoned B-4 (highway business) district. Currently, there is a commercial structure located on the site. The property owner, Christine Elsberg, desires to subdivide the site so the rear commercial space, 3708 11th Street, occupied by the Illinois – Iowa Independent Living Center, will be located on a separate lot that can be sold to that organization for its potential future expansion. This lot split will require two variances since there will be a “zero lot line” in the rear yard of proposed Lot One and the front yard of proposed Lot Two (B-4 zoning requires a 20-foot front yard setback and a ten-foot rear yard setback).

Proposed Lot One will have an area of 11,033 square feet and a lot width of 91.01 feet. Ms. Elsberg’s insurance office and a second commercial space will be located on this lot. There are also parking spaces located on this lot that will have a 53’ parking and access cross-easement agreements with the new owners of proposed Lot Two.

Proposed Lot Two will have an area of 33,234 square feet and will have a 20.01’ “flag” access to 11th Street. There will be parking, access and a sign easement within the flag area of this lot. The proposed lot has additional parking and room for future expansion to the west (rear) of the lot.

Although there are two variances being requested, the subdivision will allow for the future separate ownership and expansion of an existing office space. The City Engineer has approved the final plat with some minor technical changes

Staff recommends the final plat be approved with the requested variances and subject to minor technical revisions required by the City Engineer because it will allow for separate ownership and expansion of an existing office and provide adequate parking and access for both lots through access and parking cross-easements.

Chairman Levin asked for questions from the Commissioners for Mr. Fries.

Commissioner Oestreich asked for clarification on the new lot lines as shown on the drawing. Specifically, what the dotted lines represent.

Mr. Fries replied that the dotted lines show the utility easement for the site.

Commissioner Creger asked what the tenant business was and if ownership of property would have an effect of their tax status.

Mr. Carmen replied that the Independent Learning Center is a services/support provider for people with disabilities. Their tax status might be impacted by the ownership of property, and they could apply for property-tax exempt status if they so choose.

Commissioner Peterson asked if a PUD would be a better choice for this property.

Mr. Fries replied that separate ownership is desired and that is why the lot is being subdivided. Also, a PUD needs to be at least 60,000 square-feet and this property does not meet that requirement.

As there were no additional questions for staff and no others in the audience to speak, Chairman Levin asked for discussion by the Commissioners.

Commissioner Johnson moved that the request be approved as recommended by staff. Commissioner Meegan seconded the motion.

Chairman Levin called for the motion and it passed on a unanimous vote.

The recommendation will be presented to City Council on Monday, September 13, 2010 at 6:45 p.m.

Other Business:

Discussion was held on the fact that churches are closing or moving due to high property maintenance costs and aging congregations. Their old abandoned buildings are falling into disrepair, and are not easily sold. It was also mentioned that some churches are moving out of their old buildings into vacant commercial spaces. If a building has building code violations, the City Inspections Department can take action, citing the owner for the violations and requiring the owner to either repair or remove the violations as well as pay fines for the time the property is in disrepair. The City could also support redevelopment of these unique buildings if they were converted into commercial or residential uses that were not of a religious nature and depending where they were located.

Other conversation revolved around the Spirit Partners area, and other buildings and sites in that area that have a long history of disrepair and blighted appearance, and how the Spirit Partners expansion can be utilized to spearhead additional improvements. Commissioner Moline cited specific properties, asking about the status of redevelopment or code enforcement.

The issue of temporary signage was also discussed; specifically multiple flu shot signs at the City's two Walgreen's locations. Alan Carmen said they violate the City's Sign Ordinance and that staff would make them aware of the regulations.

Adjournment:

Commissioner Meegan made a motion to adjourn. Commissioner Peterson seconded the motion and it carried unanimously.

The meeting adjourned at 6:00 p.m.

Respectfully submitted,

Alan M. Carmen, Secretary
Rock Island Planning Commission

REPORT

To: Planning Commission

From: Planning and Redevelopment Division
Community and Economic Development Department

Date: October 20, 2010

Subject: Review of Revisions to Approved Final Plat of Elsberg Second Addition

The attached plat includes revisions made to the approved Elsberg Second Addition Final Plat (approved by the City Council on September 13th). The revised plat is still a two-lot minor plat located at 3700, 3704 and 3708 11th Street, zoned B-4 (highway business) district. The change in the plat enlarges the area of proposed Lot One from 11,030 to 18,943 total square feet.

Currently, there is a commercial structure located on the site. The property owner (Christine Elsberg) desires to subdivide the site so the rear commercial space (3708 11th Street, occupied by the Independent Living Center) will be located on a separate lot that can be sold to that organization for its potential future expansion. This revised lot split will require two variances since there will be a “zero lot line” in the rear yard of proposed Lot One and the front yard of proposed Lot Two (B-4 zoning requires a 20-foot front yard setback and a ten-foot rear yard setback).

Proposed Lot One will have an area of 18,943 square feet and a lot width of 91.01 feet. Ms. Elsberg’s insurance office and a second commercial space will be located on this lot. The revised lot now extends it further to the west to include more of the existing asphalt parking area. There will still be parking and access cross-easement agreements with the new owners of proposed Lot Two.

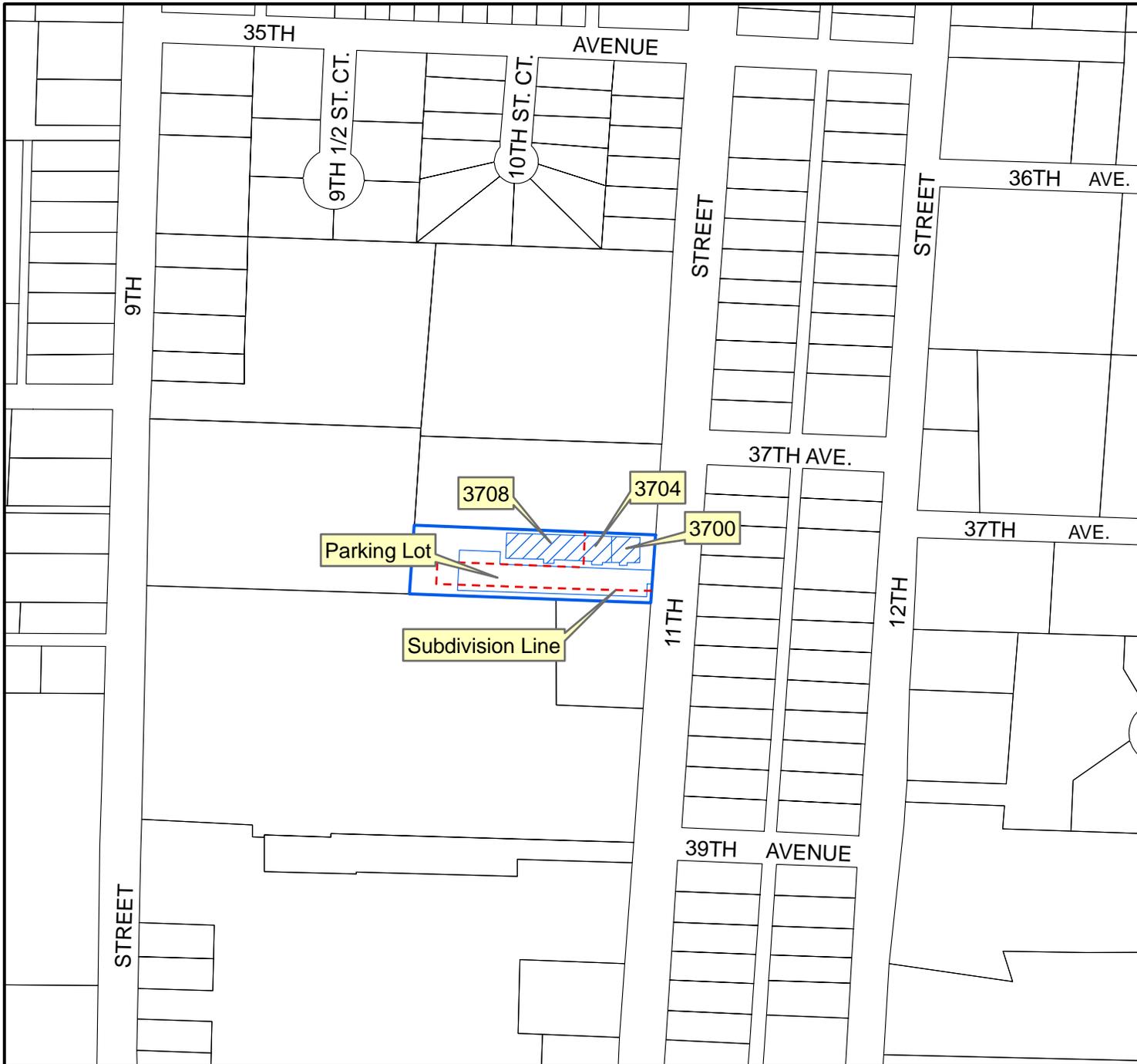
Proposed Lot Two will have an area of 25,296 square feet and will have a 20.01’ “flag” access to 11th Street. The new lot area will include less of the existing asphalt parking area, but there will still be parking, access and sign easements within the flag area of this lot. The proposed lot has room for future building and parking expansion to the west (rear) of the lot.

Although there are two variances being requested, the subdivision will allow for the future separate ownership and expansion of an existing office space. The City Engineer has approved the final plat.

Recommendation:

That the final plat be approved with the requested variances because it will allow for separate ownership and expansion of an existing office and provide adequate parking and access for both lots through access and parking cross-easements.

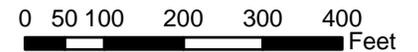
SUBDIVISION LOCATION MAP



SUBDIVISION LOCATION MAP 3700, 3704 & 3708 11th Street

- Subject Property
- Building
- Subdivision Line

* Note: Aerial Flown April 2005



City of Rock Island

COMMUNITY AND ECONOMIC
DEVELOPMENT DEPARTMENT
Planning and Redevelopment



SUBDIVISION LOCATION MAP



SUBDIVISION LOCATION MAP 3700, 3704 & 3708 11th Street

- Subject Property
- Building
- Subdivision Line

* Note: Aerial Flown April 2005



0 50 100 200 300 400
Feet

City of Rock Island

COMMUNITY AND ECONOMIC
DEVELOPMENT DEPARTMENT
Planning and Redevelopment



**FINAL PLAT OF:
ELSBERG SECOND ADDITION**

BEING A REPLAT OF ELSBERG FIRST ADDITION TO THE CITY OF ROCK ISLAND, LOCATED IN THE SOUTHWEST QUARTER OF SECTION II, TOWNSHIP 17 NORTH, RANGE 2 WEST OF THE 4TH PRINCIPAL MERIDIAN, ROCK ISLAND COUNTY, ILLINOIS

TO THE BEST OF MY KNOWLEDGE AND BELIEF THE DRAINAGE OF SURFACE WATERS BOTH WITHIN AND AROUND THIS SUBDIVISION WILL NOT BE CHANGED BY THE CONSTRUCTION OF SAME OR ANY PART THEREOF.

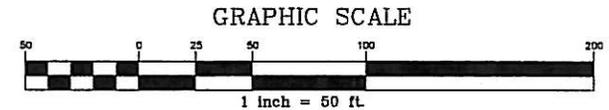
LICENSED PROFESSIONAL ENGINEER
LICENSE NO. _____
MY LICENSE EXPIRATION DATE IS _____

OWNER OR ATTORNEY _____

LEGEND:

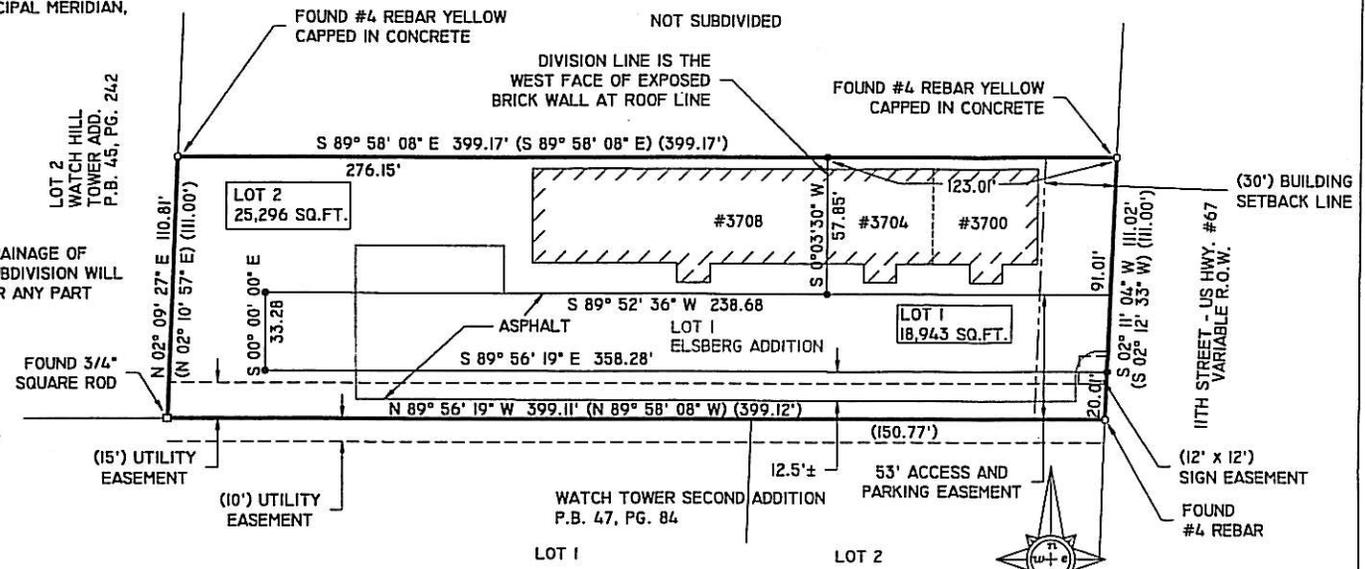
DEED DIMENSION = (0.0')
FIELD DIMENSION = 0.0'
MONUMENTS FOUND = o
MONUMENTS SET #4 REBAR
CAPPED *CRAPNELL NO.35-2390* = ●
FENCE LINE = -x-x-x-x-x-x-

NOTE: A BLANKET ACCESS AND PARKING EASEMENT TO BE ESTABLISHED ON ASPHALT AREA AS SHOWN HEREON.



SURVEY DATE: 8-3-10 REVISED: 10-1-10

TO THE BEST OF SURVEYOR'S KNOWLEDGE, ALL EASEMENTS AFFECTING THIS PROPERTY ARE SHOWN.



THIS PROFESSIONAL SERVICE CONFORMS TO THE CURRENT ILLINOIS MINIMUM STANDARDS FOR A BOUNDARY SURVEY.

MICHAEL D. CRAPNELL
ILLINOIS PROFESSIONAL LAND SURVEYOR
LICENSE EXPIRATION DATE NOVEMBER 30, 2010

DATE: _____
NO. 35-2390

PREPARED FOR:
CHRISTINE ELBERG
1610 - 18TH AVENUE
ROCK ISLAND, ILLINOIS

SURVEY ADDRESS:
3700, 3704 & 3708
11TH STREET
ROCK ISLAND, ILLINOIS

CRAPNELL LAND SURVEYING COMPANY
814 EAST RIVER DRIVE
DAVENPORT, IOWA 52803
(563) 336-3256
PROFESSIONAL LAND SURVEYING FIRM #184-002765

| | | | |
|-------|----------|----------|-----------------------|
| DATE | 8-9-10 | LOCATION | ROCK ISLAND, ILLINOIS |
| SCALE | 1" = 50' | DRAWN | KLC |
| | | CHK'D | MDC |



REPORT

To: Planning Commission

From: Planning and Redevelopment Division
Community and Economic Development Department

Date: October 22, 2010

Subject: Digital Signs

Staff recently participated in an American Planning Association audio conference entitled *Planning for Signs and Billboards in a Digital Age*. A copy of the PowerPoint presentation and one of the background items are attached for your consideration.

As we have all observed, technology has changed the way information is displayed, moving from hand painted signs to vinyl to LED to full scale digital signs (using liquid crystal and other types of displays). As the medium changes, sign ordinances have evolved as well.

The audio conference offered suggestions regarding ways to deal with the new technologies, political signs, aesthetic and safety considerations and the legal context for doing so. This material is presented to the Planning Commission as a means to share this information, not to formally request that the City's Sign Ordinance be amended unless there is a consensus to pursue this.

Additional resources are available at www.planning.org/audioconference/psb. Click on "I am a conference PARTICIPANT."



Planning for Signs and Billboards in a Digital Age

October 13, 2010
 4:00 – 5:30 p.m. Eastern
 Conference resources online
www.planning.org/audioconference/psb
 Ask questions
 Fax: 312-782-6727
 E-mail: education@planning.org

1



Today's Speakers

 Eric Damian Kelly, FAICP, Ball State University
 Robin Wolpert, Greene Espel, PLLP
 Randal R. Morrison, Sabine & Morrison



2



How the sign industry works

 Robin:

- Goal - Get Noticed!
- Digital billboards are valuable commodities
 - Capture attention
 - Hold attention
- Cost of technology is going down
- Industry is subject to federal, state, and local regulation



Image: Copyright terms used with permission

Links to cases mentioned in the program will be posted on www.planning.org/audioconference/psb/resourcematerials.htm

3



The American Planning Association
 Professional Institute
AICP
 American Institute
 of Certified Planners
 Making Smart Communities Happen

The most critical issues

 Robin:

- First Amendment protections
- Aesthetics & public safety issues
- Push to convert static signs to digital
 - Sign code shakedown
 - Cap and trade
- A sign code that achieves community's policy objectives

4

Links to cases mentioned in the program will be posted on www.planning.org/audioconference/psb/resourcematerials.htm



The American Planning Association
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 Making Smart Communities Happen

The legal foundation for sign regulation

 Randal:

First Amendment (1791):
 Congress shall make no law respecting
 [1] the establishment of religion, or
 [2] prohibiting the free exercise thereof; or
 [3] abridging the freedom of speech, or
 [4] of the press; or
 [5] the right of the people peaceably to assemble, and
 [6] to petition the Government for redress of grievances.

5

Links to cases mentioned in the program will be posted on www.planning.org/audioconference/psb/resourcematerials.htm



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 Making Smart Communities Happen

WHAT IS NOT PROTECTED

First Amendment does NOT protect

- Deliberate falsehoods, deceptive commercial ads
- Fighting words – incitement to mob action
- Destructive acts / trespass / violence
- Profit / quest for profit
- Non-expressive conduct (ordinary social dancing)
- Obscenity, criminal conspiracies
- Threats against life of president or vice pres.
- Private restraints on expression (HOA rules, employment contracts)

6

Image: Carolyn Torra, used with permission



REGULATOR'S MANTRA

- The medium is NOT the message
- Cities regulate the medium, not the message

Thus:

- No "construction signs"
- "Construction Site Signs" instead – don't control copy content



Image: Clayton Terrell, used with permission

7



The legal foundation for sign regulation

Randal:



- Commercial vs. non-commercial
- Police Dept. of Chicago v. Mosely (1972)
 - "The First Amendment means that the government has no power to restrict expression because of its message, its ideas, its subject matter, or its content."
 - "[O]ur people are guaranteed the right to express any thought, free from government censorship. The essence of this forbidden censorship is content control."
 - "There is an 'equality of status in the field of ideas, and government must afford all points of view an equal opportunity to be heard."

8

Links to cases mentioned in the program will be posted on www.planning.org/audioconference/psb/resourcematerials.htm



The legal foundation for sign regulation

Randal:



- Metromedia v. San Diego (1981)
 - City can ban billboards
 - City cannot favor commercial speech over noncommercial
 - For noncommercial, city cannot pick and choose favorites

9

Links to cases mentioned in the program will be posted on www.planning.org/audioconference/psb/resourcematerials.htm



The Public Forum Doctrine

Randal:



- Public Forum Doctrine
 - Lehman v. Shaker Heights
 - DiLoreto v. Downey Unified School District
 - Uptown Pawn v. Hollywood, FL.
- Traditional Public Forum areas
 - Must allow in-person picketing
 - City can ban inanimate signs
 - City can ban commercial speech

10
 Links to cases mentioned in the program will be posted on www.planning.org/audioconference/psb/resourcematerials.htm



Two Ordinances

Randal:



- Regulatory Ordinance
 - City sets rules for signs on private property
- Proprietary Ordinance
 - City regulates its own property



11
 Links to cases mentioned in the program will be posted on www.planning.org/audioconference/psb/resourcematerials.htm



The Legislative Predicate

Eric:



- States the purpose served by the sign ordinance
- States how the ordinance will serve that purpose

12
 Links to cases mentioned in the program will be posted on www.planning.org/audioconference/psb/resourcematerials.htm



Regulation for aesthetic reasons



Eric:

- Aesthetics secondary to health/safety
- Establish aesthetic guidelines in the comp plan



Image: Carolyn Torma, used with permission

13

Links to cases mentioned in the program will be posted on www.planning.org/audioconference/psb/resourcematerials.htm



Signs and Safety - Studies



Robin:

- Jerry Wachtel
 - 2011. FHWA study. To be released.
 - 2009. "Safety Impacts of the Emerging Digital Display Technology for Outdoor Advertising Signs."
 - 2007. Report for Maryland State Highway Department.
 - 1980. Safety and Environmental Design Considerations in the Use of Commercial Electronic Variable Message Signs.
- FHWA studies
 - 2009. The Effects of Commercial Electronic Variable Message Signs (CEVMS) on Driver Attention and Distraction: An Update.
 - 2001. Research Review of Potential Safety Effects of Electronic Billboards on Driver Attention and Distraction.

14

Links to cases mentioned in the program will be posted on www.planning.org/audioconference/psb/resourcematerials.htm



Signs and Safety – Industry-sponsored Studies



Robin:

- Virginia Tech Transportation Institute (2003)
 - Dr. Suzanne Lee
 - Representatives from Outdoor Advertising Association of America involved.
- Another VTTI study (2007)
 - Co-authored by Lee
- Tantala & Tantala (2007 & 2009)

15

Links to cases mentioned in the program will be posted on www.planning.org/audioconference/psb/resourcematerials.htm



Safety Implications

Robin:

- Digital signs contribute to driver distraction
 - Implications for:
 - Duration of dynamic messages
 - Whether to permit motion, animation, video
 - Level of brightness
 - Spacing of signs
 - On-site v. off-site
 - Sign size, text size
 - Intervals between messages, visual effects, sequencing
 - Amount of information displayed

16

Links to cases mentioned in the program will be posted on www.planning.org/audioconference/psb/resourcematerials.htm



Exceptions

Eric:

- Content-based
 - Political signs
 - Real estate signs
 - Gas price signs
 - Contractor signs
 - Traffic control signs

17

Links to cases mentioned in the program will be posted on www.planning.org/audioconference/psb/resourcematerials.htm



Exceptions - Political Signs

Randal:

- Government choosing subject of debate
- Violates Mosely principle
- Most common serious error in sign ords
- Source of much litigation
 - Limits on display time for election signs
 - Government almost always loses
 - Judges won't tolerate time limits on political speech

18


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Making Smart Communities Happen

Exceptions - Political Signs

 Randal:

- What should planners do?
- Regulate time, place, manner
 - State max. area for temporary, noncommercial signs
 - At all times, on all parcels
 - Increase display area during a defined pre-election period.

19


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Making Smart Communities Happen

Digital Signs

 Randal:

- Companies offer deals for communities

 Robin:

- Communities should be prepared to deal with a changing industry

20

Links to cases mentioned in the program will be posted on www.planning.org/audioconference/psb/resourcematerials.htm


The American Planning Association
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American Institute
of Certified Planners
Making Smart Communities Happen

Digital Signs - Suggestions

 Eric:

- Eliminate content-based distinctions
- Update provisions dealing with new technologies – “flashing” vs. LED, etc.
- Specify permitted changes to nonconforming signs.

21

Links to cases mentioned in the program will be posted on www.planning.org/audioconference/psb/resourcematerials.htm



Round Robin - Take home tips


Randal:

- Regulate the medium, not the message
- Include a "message substitution" provision
- Omit references to election campaign speech
- Have two ordinances
- Include a special definition of digital signs

22



Round Robin - cases


Eric:

- Pleasant Grove City v. Sumnum (2009)
- Ill. Dunesland Preservation Society v. Ill. DNR (2009)
- Resident Action Council v. Seattle Housing Authority


Robin:

- Consistently apply public safety rationale
- Beware the sign code shakedown and cap & trade
- Review your sign code and definitions

23

Links to cases mentioned in the program will be posted on www.planning.org/audioconference/psh/resourcematerials.htm



Questions & Answers


Eric Damian Kelly, FAICP, Ball State University


Robin Wolpert, Greene Espel, PLLP


Randal R. Morrison, Sabine & Morrison

Fax your questions to 312-782-6727 or email education@planning.org

24



Planning for Signs and Billboards in a Digital Age

Conference resources online
www.planning.org/audioconference/psb
Fax your evaluations to **312-786-6700**

25

ZONINGPRACTICE

April 2008

AMERICAN PLANNING ASSOCIATION



➔ ISSUE NUMBER FOUR

PRACTICE SMART SIGN CODES

A large billboard advertisement is mounted on a building facade. The billboard has a dark background with a grid of small, light-colored, semi-circular shapes. The text 'Digital Signs: Context Matters' is written in a large, white, sans-serif font. A large, black, stylized number '4' is overlaid on the bottom right corner of the billboard. In the background, a tall, modern skyscraper is visible against a clear sky.

**Digital
Signs:
Context Matters**

4

Looking Ahead: Regulating Digital Signs and Billboards

By Marya Morris, AICP

Cities and counties have always been challenged to keep their sign ordinances updated to address the latest in sign types and technologies.

Each new sign type that has come into use—for example, backlit awnings and electronic message centers—has prompted cities to amend their regulations in response to or in anticipation of an application to install such a sign.

The advent in the last several years of signs using digital video displays represents the latest, and perhaps the most compelling, challenge to cities trying to keep pace with signage technology. More so than any other type of sign technology that has come into use in the last 40 to 50 years, digital video displays on both off-premise (i.e., billboards) and on-premise signs raise very significant traffic safety considerations.

This issue of *Zoning Practice* covers current trends in the use of digital technology on off-premise billboards and on-premise signs. It recaps the latest research on the effects of

this type of changeable signage on traffic safety. It also discusses the use of digital video sign technology as a component of on-premise signs, including a list of ordinance provisions that municipalities should consider if they are going to permit this type of sign to be used. I use the phrase digital display or video display, but these devices are also referred to as LEDs or, collectively, as “dynamic signs.”

BRIGHT BILLBOARDS

While digital technology is growing in use for on-premise signs, it is the proliferation of digital billboards that has triggered cities and counties to revise their sign ordinances to address this new type of display. Of the approximately half-million billboards currently lining U.S. roadways, only about 500 of them are digital. However, the industry's trade

group, the Outdoor Advertising Association of America, expects that number to grow by several hundred each year in the coming years. In 2008, digital billboards represent for the sign industry what the Comstock Lode must have represented for silver miners in 1858—seemingly limitless riches. The technology allows companies to rent a single billboard—or pole—to multiple advertisers. A billboard company in San Antonio, for example, estimated that annual revenue from one billboard that had been converted from a static image to a changeable digital image would increase tenfold, from \$300,000 to \$3 million just one year after it went digital.

It is very difficult for cities and counties to get billboards removed once they are in place. Billboard companies have made a concerted effort to get state legislation passed that limits or precludes the ability of local

Ⓞ A typology of moving-image signs. The variable message sign at the right uses a motor to switch among three different static images. Next, the electronic messageboard at Wrigley Field in Chicago displays scrolling text and simple images. The on-premise digital sign, pictured third from left, looks like a giant television screen, displaying a steady stream of video images. On the far right, this digital billboard cycles through a number of static video images at regularly timed intervals.



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governments to require removal of existing billboards through amortization. The only option left is paying cash compensation. The federal Highway Beautification Act, which was modified many years ago under industry pressure, also prohibits amortization and requires cash compensation for billboard removal.

With the amortization option unavailable, some cities and counties have struck deals with billboard companies requiring them to remove two boards for every new one they install. Other jurisdictions have established simple no-net-increase policies. Although many communities have had success with these approaches, in the

last few years the industry has devised a litigious tactic to secure new billboard permits. Billboard companies challenge the constitutionality of a sign provision, and when the ordinance is in legal limbo, they rush in to secure billboard permits.

The American Planning Association has joined Scenic America, the International Municipal Lawyers Association, and others in filing amicus curiae briefs in many of these cases to show the courts the industry's pattern of conduct and deliberate strategy to circumvent local sign codes. A review in January 2006 found 113 such "shakedown" sign cases filed in the federal

courts since 1997, and eight filed in state courts in the same time period. For more information visit the APA Amicus Curiae webpage at www.planning.org/amicusbriefs.

The emergence of the highly lucrative digital billboards has also, however, given local governments some leverage to at least reduce the total number of billboards. Many of the applications cities are seeing for the video billboards are requests by companies to replace the static type with the new video displays in key locations. The added revenue potential from a digital format has proved to be enough of an incentive to get companies to agree to remove multiple static billboards in exchange for permits to install video display in certain locations.

In June 2007, Minnetonka, Minnesota, in the Twin Cities area, reached a settlement with Clear Channel in which the company agreed to

The emergence of the highly lucrative digital billboards has given local governments some leverage to at least reduce the total number of billboards.



Photos by David Morley

remove 15 of the 30 conventional static image billboards in the city in exchange for permission to install its digital billboards. The city will permit the company to install no more than eight dynamic signs at four to six locations.

The City of San Antonio amended its sign and billboard ordinance in December 2007 to require the removal of up to four static billboards in exchange for permission to install one digital display billboard in their place. Prior to that amendment the city had no provisions for digital sign technology, but it did already have a two-for-one replacement requirement. The city has developed a sliding scale that determines the number of billboards required to be removed in exchange for a single digital billboard. According to the scale, the number of digital signs permitted is determined by the total square footage of static billboard faces removed. Therefore, a billboard company will be required to demolish as few as three and as many as 19 billboards to get one new digital billboard structure placed or an existing static billboard face replaced.

IT DEPENDS ON YOUR DEFINITION OF 'DISTRACTING'

Digital signs are brighter and more distracting than any other type of sign. Other attention-grabbers, like strobe lights, mirrors, searchlights, and signs with moving parts, are typically prohibited (or allowed under very narrow circumstances) by even the most hands-off jurisdictions. The high visual impact of digital signs has prompted highway and traffic safety experts to try to quantify how drivers respond to such distractions. This research, which is summarized below, has been instrumental in helping cities craft new sign ordinances that address the specific characteristics of such signs, including how often the messages or images change, the degree of brightness, and their placement relative to residential areas.

The Federal Highway Administration is currently conducting a study on driver distraction and the safety or impact of new sign technologies on driver attention. The initial phase, which is slated to be completed by June 2008, will identify and evaluate the most significant issues and develop research methods needed to secure definitive results. The FHWA anticipates the second phase of the research study and final report will be completed in the latter part of calendar year 2009. Also, the Transportation Research Board (a branch of the National Science Foundation) has formed a subcommittee to examine research needs on electronic signs.



David Morley

Recent studies indicate that digital displays with continuous dynamic content are more distracting than other types of moving-image signs. Signs that work well in pedestrian-oriented areas might be inappropriate for busy highways.

Until a couple of years ago, one of the only studies on the effects of billboards and traffic safety was a 1980 survey of existing research on the subject prepared for the Federal Highway Administration (Wachtel and Netherton 1980). It did not, however, provide any concrete answers. The study noted “attempts to quantify the impact of roadside advertising on traffic safety

have not yielded conclusive results.” The authors found that courts typically rule on the side of disallowing billboards because of the “readily understood logic that a driver cannot be expected to give full attention to his driving tasks when he is reading a billboard.”

A 2006 study by the National Highway Traffic Safety Administration that focused primarily on driver distractions inside the car (i.e., phone use, eating, and changing the radio station) concluded that any distraction of more than two seconds is a potential cause of crashes and near crashes.

A 2004 study at the University of Toronto found that drivers make twice as many glances at active (i.e., video signs) than they do at passive (i.e., static) signs. All three of the moving sign types that were studied (video, scrolling text, and trivision) attracted more than twice as many glances as static signs. They also found that the drivers' glances at the active signs were longer in duration; 88 percent of glances were at least 0.75 seconds long. A duration of 0.75 seconds or longer is important because that is the amount of time required for a driver to react to a vehicle that is slowing down ahead. Video and scrolling text signs received the longest average maximum glance duration.

An earlier study also at the University of Toronto that was designed to determine whether video billboards distract drivers' attention from traffic signals found that drivers made roughly the same number of glances at traffic signals and street signs with and without full-motion video

ORDINANCES AND ZONING REPORTS

- ◆ City of Minnetonka, Minnesota. 2007. Staff report to city council recommending adoption of an ordinance regulating digital signs. June 25. Available at www.eminnetonka.com/community_development/planning/show_project.cfm?link_id=Dynamic_Signs_Ordinance&cat_link_id=Planning.
- ◆ City of San Antonio City Code, Chapter 28. Amendment Adding Provisions for Digital Signs. Last revised December 2, 2007. Available at <http://epay.sanantonio.gov/dsddocumentcentral/upload/SIGNsecDRAFTF.pdf>.
- ◆ City of Seattle, Land Use Code, Section 23.55.005 Signs, Video Display Methods. Last revised 2004. <http://clerk.ci.seattle.wa.us/~public/clrkhome.htm>.

billboards present. This may be interpreted to mean that while electronic billboards may be distracting, they do not appear to distract drivers from noticing traffic signs. This study also found that video signs entering the driver's line of sight directly in front of the vehicle (e.g., when the sign is situated at a curve) are very distracting.

A 2005 study by the Texas Transportation Institute of driver comprehension of sign messages that flash or change concluded that such signs are more distracting, less comprehensible, and require more reading time than do static images. While this research did not evaluate advertising-related signs, it does demonstrate that flashing signs require more of the driver's time and attention to comprehend the message. In the case of electronic billboards, this suggests that billboards that flash may require more time and attention to read than static ones.

The City of Seattle commissioned a report in 2001 to examine the relationship between

Sign messages that flash or change are more distracting, less comprehensible, and require more reading time than do static images.

The Seattle study also found that drivers expend about 80 percent of their attention on driving-related tasks, leaving 20 percent of their attention for nonessential tasks, including reading signs. The report recommended the city use a "10-second rule" as the maximum display time for a video message.

APPROACHES TO REGULATING DIGITAL DISPLAY SIGNS

Most cities and counties that have amended their sign ordinances to address the use of digital display on on-premise signs and billboards have done so in response to an application by a sign owner to install a new sign that uses the

ital video display signs while still permitting electronic message centers.

3) A relatively small number of sign ordinances have been amended to allow video display signs under narrowly prescribed circumstances and with numerous conditions.

For jurisdictions that want or need to allow them, the following section explains additional considerations that should be added to a sign ordinance to effectively regulate digital display signs.

Sign type. The ordinance must indicate whether the digital display can be used on off-premise billboards only, on on-premise signs only, or on both sign types.

Billboards with changeable digital images allow billboard companies to dramatically increase their revenue by renting the same sign face to multiple advertisers.



David Morley

electronic signs with moving/flashing images and driver distraction. The study was conducted by Jerry Wachtel, who in 1980 had conducted the first-ever study on signs and traffic safety for the Federal Highway Administration.

The Seattle report concluded that electronic signs with moving images will distract drivers for longer durations (or intervals) than do electronic signs with no movement. The study also noted that the expanded content of a dynamic sign also contributes to extended distraction from driving. Specifically it found that signs that use two or more frames to tell a story are very distracting because drivers are involuntarily compelled to watch the story through to its conclusion.

technology or in response to a sign owner having replaced an existing sign face with a digital display. Some cities, like Minnetonka, were required by a court settlement with a billboard company to allow the technology. Although regulations for digital signs are still relatively new, we can group the regulatory approaches (or lack thereof) into three general categories:

- 1) Most sign ordinances are still silent on the issue of digital video displays, but almost all do regulate electronic message centers and also prohibit or restrict signs that move, flash, strobe, blink, or contain animation.
- 2) A smaller but growing number of sign ordinances contain a complete prohibition on dig-

Definitions. The definitions section must be updated to include a detailed definition of digital display signage and the sign's functional characteristics that could have an effect on traffic safety and community aesthetics.

Zoning districts. The ordinance should list the districts in which such signs are permitted and where they are prohibited. Such signs are commonly prohibited in neighborhood commercial districts, historic districts, special design districts, and scenic corridors, in close proximity to schools, and in residential districts. On the other end of the spectrum, East Dundee, Illinois, for example, expressly encourages digital video signs in two commercial overlay districts, but only a

RESOURCES

- ◆ Beijer, D. and A. Smiley. 2005. "Observed Driver Glance Behavior at Roadside Advertising Signs," *Transportation Research Record*.
- ◆ Dudek, C. L. et al. 2005. "Impacts of Using Dynamic Features to Display Messages on Changeable Message Signs," Washington, D.C.: Operations Office of Travel Management: Federal Highway Administration.
- ◆ "Dynamic" Signage: Research Related To Driver Distraction and Ordinance Recommendations. Prepared by SRF Consulting Group, Inc. for the City of Minnetonka, Minnesota. June 7, 2007 (www.digitalooh.org/digital/pdf/2007-minnetonka_digital-srf_consulting_reporto6-08-07.pdf).
- ◆ "The Impact of Driver Inattention on Near-Crash/Crash Risk: An Analysis Using the 100-Car Naturalistic Driving Study Data." 2006. National Highway Traffic Safety Administration, U.S. Department of Transportation. April.
- ◆ McBride, Sarah. "Seeing the Light: In Billboard War, Digital Signs Spark a Truce." *Wall Street Journal*. February 3, 2007.
- ◆ Smiley, A. et al. 2004. "Impact of Video Advertising on Driver Fixation Patterns." *Transportation Research Record*.
- ◆ *Unsafe at Any Speed: Billboards in the Digital Age*. 2007. Scenic America Issue Alert 2. Available at www.scenic.org/pdfs/eb.pdf. The Scenic America website has a number of excellent resources for planners and citizens interested in regulating digital signage, including a downloadable PowerPoint presentation, research summaries, and model ordinances.
- ◆ Wachtel, J. and R. Netherton. 1980. "Safety and Environmental Design Considerations in the Use of Commercial Electronic Variable-Message Signage." Report No. FHWA-RD-80-051. Washington, D.C.: Federal Highway Administration.

few land uses—new car dealerships, multi-tenant retail centers, and amusement establishments—are permitted to have them.

Placement and orientation. A minimum spacing requirement between signs and residential areas should be considered, as should a provision requiring that the sign face be oriented away from residential areas and other scenic or sensitive areas. The Baker and Wolpert study recommended that dynamic signs be limited or prohibited at intersections, in demanding driving environments, and in places where they obstruct a driver's view. In Seattle, the sign face of on-premise digital signs must not be visible from a street, driveway, or surface parking area, nor may it be visible from a lot that is owned by a different person.

Sign area. For on-premise signage, many ordinances include a limit on the percentage of the sign face that can be used for digital display. Thirty percent is common although in some areas, such as entertainment districts, that proportion may be much higher.

Illumination and brightness. The ordinance should address the legibility and brightness of a sign both during the day and after dark. During the day the issue is reducing or minimizing glare and maintaining contrast between the sign face and the surrounding area. At night the issues are the degree of brightness and its impact on driver distraction and on light trespass into residential areas. In the study for the City of Minnetonka, researchers noted the challenge posed by this aspect of digital signs: "There is no objective definition of excessive brightness because the appropriate level of brightness depends on the environment within which the sign operates."

Message duration and transition. The ordinance must include a minimum duration of time that a single message must be displayed. Typically this is expressed in terms of seconds. The San Antonio billboard ordinance requires each image to remain static for at least eight seconds and that a change of image be accomplished within one second or less.

The city's ordinance requires any portion of the message that uses a video display method to have a minimum duration of two seconds and a maximum duration of five seconds. Further, it requires a 20-second "pause" in which a still image or blank screen is showed following every message that is shown on a video display.

Public service announcements. In exchange for permission to use digital displays, owners of billboards in Minnesota and San

Antonio have agreed to display emergency information such as Amber Alerts and emergency evacuation information. Such a requirement can be included in an ordinance or imposed as a condition of approval.

Whether undertaking a comprehensive revision of a sign ordinance or more limited, strategic amendments to address digital technology, there are other common provisions related to electronic and digital signage that should be revisited as part of the rewrite. At the top of the list would be updating standards for conventional electronic message centers to reflect the latest research regarding driver distraction and message duration. Also, the boilerplate provisions common to so many ordinances that prohibit signs that flash, are animated, or simulate motion should also be rethought. These provisions could conceivably be used to prohibit digital displays without additional regulations. The problem is that these characteristics are very rarely defined in the ordinance and remain open to interpretation. Also, whenever new regulations are being considered for digital billboards, jurisdictions should take the opportunity to draft new provisions to address digital technology for on-premise signs as well. And, finally, any time the sign ordinance goes into the shop for repair—whether to address digital signage or to make broader changes—is a good time to remove or revise any provisions that violate content neutrality rules.