

BOARD OF ZONING APPEALS MEETING
NOVEMBER 21, 2017
7:00 P.M.

I CALL MEETING TO ORDER

Meeting called to order by Mr. Ramirez

Mr. Ramirez: Good evening, I would like to call the Board of Zoning Appeals meeting November 21, 2017 to order. At this moment, we have a new member and I would like to swear him in before we proceed.

(Mr. Gregory Johnson was sworn in before the Board of Zoning Appeals members).

II ROLL CALL

Members Present: Joe Ramirez, Dave Nienaber, Meghan Sullivan-Wisecup, Holly Emerson, Carolyn Ghantous, Gregory Johnson.

Members Absent: Carmen Daniels

Staff Present: Randy Campion, Greg Dale

III PLEDGE OF ALLEGIANCE

IV MINUTES OF THE REGULAR MEETING OF JULY 21, 2017

President Ramirez: At this moment if you have a phone would you please put it on mute or turn it off.

Ladies and gentlemen, this is a public hearing and all testimony given in cases pending before this board is to be made a part of a public record.

All testimony and discussions relative to said variance is recorded and it is from this recording that our minutes are taken. Citizens testifying for this board are directed to sign in on a clipboard at the rear of the room, take their place at the podium, state their names and addresses and the facts, as they are pertinent to the subject before the board. As this is a public hearing, being sworn in prior to giving testimony is required by law. At this time if you will testify, please stand up raise your right hand and repeat after me.

(All those in the audience wishing to speak or that might speak were sworn in as a group)

President Ramirez: Now did all of you sign in at the back? Okay thank you.

Members read the summary of the meeting from July 18, 2017, if so would somebody move to adopt?

Mr. Nienaber: I move to adopt.

Mrs. Sullivan-Wisecup: I second.

V CORRESPONDENCE

None

VI REPORTS

A. Report on Council

Mrs. Ghantous: Thank you Mr. President. City council met on November 15, 2017. We had five ordinances and one resolution. Ordinance number 42-2017 was authorizing the mayor and clerk of council finance director to enter into a contract with capital electric line builders Inc. For the north mall mast arm replacement project and that item was passed with a 7 to 0 vote. The next ordinance was ordinance number 43-2017 providing for the issuance of not to exceed \$1.32 million in real estate acquisition bond anticipation notes second renewal by the City of Springdale Ohio in anticipation of the issuance of the bonds providing for the pledge of the revenue for the payments of such notes. That ordinance also passed with a 7 to 0 vote. The next item was ordinance number 44-2017 that was authorizing the Mayor and Clerk of Council, Finance Director to enter into a contract with Donald W. White to serve as the mayor's court magistrate for the City of Springdale. That also passed with a 7 to 0 vote. The next one was ordinance number 45-2017 authorizing the Mayor and the Clerk of Council, Finance Director to enter into a contract with Seth S. Tieger for prosecuting services for the City of Springdale. That was passed with a 7 to 0 vote. The last ordinance of the evening was number 46-2017 authorizing the Mayor and Clerk of Council, Finance Director to enter into a contract with Justin Bartlet for the public defender services for the City of Springdale. That passed with a 7 to 0 vote. We had one resolution and that was appointing Dave Nienaber as a member of the Board of Zoning Appeals for another term. That passed with a 7 to 0 vote. That concludes my report unless anybody have any questions or Holly has anything to add. Thank you.

President Ramirez: Thank you for that report.

B. Report on Planning Commission

President Ramirez: Planning Commission met on November 14, 2017. We had two items on the docket for the night. One was requested that we table that item and move that to December and that was the SAP Springdale LLC at 12110 Princeton pike. They were looking for revisions to the preliminary PUD development plan so that will be coming up in December. The one that we did discuss was Awa Ba, 11389 Princeton pike, Springdale, conditional use permit. What she wanted to do was the zone at the property for conditional use to operate a daycare. It is a 7700 square foot facility. Is located in the Tri-Center Plaza on Princeton pike. At the discussion is still needs can meet all of the requirements for the state of Ohio with that thing they daycare but we did pass that with a 6 to 0 vote. Are there any questions on that?

VII OLD BUSINESS

None

VIII NEW BUSINESS

- A. Spring Valley Bank, 1206 Springfield Pike, Wyoming, Ohio, Administrative Appeal for the removal of the pole sign at 370 Glensprings Drive, Springdale, Ohio, application 32987.

President Ramirez: Would the representative from that property please come to the podium state your name and address.

Mr. Wittkamp: My name is David Wittkamp and I am the President of Spring Valley Bank, my addresses 697 Silver Hedge Drive, Cincinnati Ohio 45231. Here tonight I have attorney Chris Hurlburt who has reviewed some of the information and he really is going to be leading this discussion.

Mr. Hurlburt: We will try to keep this brief.

President Ramirez: Please state your name.

Mr. Hurlburt: Sure, it is Chris Hurlburt. I am an attorney with Lindhorst & Dreidam and I represent Spring Valley. We are here tonight as you mentioned on their appeal of the building official that ordered the middle section of a pylon sign to be taken down because the property that was using the middle portion of that sign has been vacant. I think it is important to get everything into the record so I will have these people put on more evidence but I do have some documentation to submit that we wouldn't mind can I give you that to you up front.

President Ramirez: What sort is this?

Mr. Hurlburt: We have aerials; we have a picture of the current sign. A picture of the sign I believe from I believe last year. (someone talking in audience not audible) Sure come on up.

Ms. Deusing: My name is Karen Deusing; I am with Everest real estate, 9902 Carver Woods Drive, Cincinnati Ohio 45242. I am working with Dave Wittkamp, I am the leasing agent for the property. We took aerials today, we provided you with aerials today, we have the pictures of the sign the way it was prior to the Days Inn going in and also have a letter from the sign company discussing the issues that we're going to talk about tonight about the removal of cabinet. So that's what we will want to submit. We have several here to pass out for everybody.

President Ramirez: Most likely the documentation that you presented from the sign manufacturer, we do not have time to review that and we will not look at that but we will certainly look at the photographs that you have.

Mr. Hurlburt: Okay.

Ms. Deusing: (speaking off mic)

President Ramirez: Normally something like this would be done with your packet initially.

Ms. Deusing: (speaking off mic) what the sign looked like prior to Everett taking it over.

Mr. Hurlburt: The sign from the sign manufacturer was brief and I did not see anything in the notice of the meeting that said we couldn't submit materials on the night of the hearing. We do have copies for everybody and I would like to submit those for the record.

President Ramirez: Yes. So, at this time do you have anything else to say, the reason the you're here and we will have discussion on that and then we'll all have comments from the staff.

Mr. Hurlburt: If I could begin with a question because it was not clear from the documentation that I reviewed, we were informed that the middle sign panel, the Beef 'O' Brady's sign panel was non-conforming but in none of the correspondence that I got did it say exactly why it was non-conforming. Does anybody here know the basis of conformity?

President Ramirez: We will get to that, yes we do. If you don't mind we'll skip past that one. Yes that is the main issue here.

Mr. Hurlburt: You have copies of where I wrote current sign at the top. We also have a photograph from; if you had to peg the year what would you say?

Mrs. Deusing: A year and a half ago.

Mr. Hurlburt: Okay. Dated from a year and a half ago.

Mrs. Deusing: A year ago. Yeah a year ago, less than a year ago.

Mr. Hurlburt: A year ago. If we could submit this to. Basically, we just want to show the top of the sign has been changed in the interim. You got one? Good deal. Broadly I believe regardless of the basis for the objection the Building Official said okay the Beef 'O' Brady's sign has not been used you have abandon the use so we want the sign cabinet taken down. The documents submitted from United-Maier Signs Inc. questions whether or not it is possible to remove that structure without damaging the integrity of the pole which is supporting the sign on top which it was just grant the permit for and so that use is clearly, it may be a non-conforming use permit is proper under the code. With that said we feel like the sign here was not abandoned in whole a portion of the sign the was not used and that the code does not permit and instruction to tear down a structure piece meal because a portion of it is not used. The analogy I like to think of is if we had a two-space retail property if one of those spaces was vacant for three years I don't think that the Building Official could say that we had to tear down half of our building. I think abandonment under the zoning code and under the Ohio Revised Code requires a complete abandonment of the entire structure and you don't have that here. So we think that the Building Official's decision was arbitrary and capricious. Based mainly on that point but also because again the City of Springdale just issued a permit for the sign on top for the Days Inn? Okay for the sign on top the Days Inn to not only remain non-conforming but, the new sign is actually larger than the one that replaced it and so it seems like an expanded not only new on top of our sign in it just doesn't think makes sense to require us to tear down the middle portion of the sign that you are continually approving a new use of. So those are the two main points and again for the record I'd like to have everybody stand up and briefly just tell you what is going on with the property so we can verify this if we end up in Common Pleas court I just want it in the record. Also, briefly I forgot to give you a copy of this. This is the subdivision plat for the property. The reason I am submitting this the sign actually lies, as I think the Building Official noted, outside of our property line, that property was conveyed to the City of Springdale in 2003. There are existing easement in that area, one of them is for the sign and that easement did not go away when the property was conveyed. So, I just wanted to get something on the record to show that. You know what Shawn could I call you up here for a second. Would you state your name for the record and who you are?

Mr. Bowy: Shawn Bowy, I am the owner of the Days Inn & Suites, 400 Glensprings Drive, Springdale, 45246.

Mr. Hurlburt: Could you just tell them about the, you have the sign above.

Mr. Bowy: I do.

President Ramirez: Could you get a little closer to the mic, we record this and that the minutes from that thank you.

Mr. Bowy: Sure. As some of you know I have been here about 10 months in Springdale renovating that property and that new Days Inn sign went up, I would say it is about two or three months ago and we're still working on the other one, which is another story. I am just here really to support the cause. I don't want to lose the sign, I

was just permitted the sign, my portion on top. Spent a lot of money and it is also a visibility factor for a hotel and I am just here to support their efforts to try to come to some sort of favorable resolution that would not require removing that cabinet because mainly based on that letter from the sign company who put up my sign as well. There are some questions about the integrity of the pole because of the way that there are some welds on the inside and I don't understand quite all of it.

Mr. Hurlburt: How long has your new sign been up?

Mr. Bowy: Two to three months.

Mr. Hurlburt: So roughly, and the new sign is, you know I would testify but I am not here to give testimony, the new sign is larger than the old one?

President Ramirez: Excuse me, again if you could have the discussion so we can record it.

Mr. Hurlburt: The new sign, we had mentioned that it is bigger than the old one.

Mr. Bowy: Well it is, and you guys probably know better and the sign company can speak better the old sign was a rectangular shape, the new sign has the Days Inn logo which is semi rectangular but then has the sun logo and I guess the way to calculate square and it footage of that sign is to actually square it off and because it is taller because of that it is actually, the useable space is less but by squaring it off takes up more and I believe we had to get a variance for that one as well as the interstate sign. Because it was larger than the one that was there. The sign company would know better than me on that but I do believe that that was the case.

President Ramirez: Anything else you will have a chance to speak again we want to go to the comments from staff, you have anything else to say at this time.

(Audience member speaking off mic)

Mr. Wittkamp: Again, I am Dave Wittkamp, President of Spring Valley Bank. We took over that building in December of last year and I just want to point out a couple of things. We don't know your sign code. You know I'm a banker and I have got a situation that I've got a building that we have got to find a buyer for which we have a contract and we also don't know your procedures very well so it is a little bit kind of we are not sure where we are at, the only thing we do know is there's been a demand that we take that sign cabinet down and we don't believe that makes sense for the property, for the City or anything. Again we don't know you're ordinance and it is been a very challenging property. We need help and hopefully some understanding and support to get this thing developing get a good tenant in that will be good for the City also from Mr. Bowy's business. If we get a restaurant in that will help that. That whole area has been through a lot of changes. That shopping center, the other side of the area. It has just been a lot going on over there in the last year and has not made it easy to find a buyer for the building so again we're just asking for you to give your consideration and do what you can to help us.

Mr. Hurlburt: Back to that point Dave, you listed the property once you bought it back correct?

Mr. Wittkamp: Yes.

Mr. Hurlburt: Okay, so you have been trying to sell it in that time?

Mr. Wittkamp: Oh yeah.

Mr. Hurlburt: To a restaurant owner.

Mr. Wittkamp: Yes, well to anybody who would buy it. It's restaurant it is really a single purpose building, it was a Perkin's restaurant for probably 30 some years.

Mr. Hurlburt: We have had some recent success with the listing correct?

Mr. Wittkamp: Yes. So, I have and executed contract, Mrs. Deusing has found somebody to buy the building. The contract has been accepted. It is contingent upon a lease with the tenant or a tenant, so they have a tenant. The lease has not been signed so we are in that interim period now where it is under contract and we are waiting for that part of it to happen and we are very optimistic, we would like to have all of this done by the end of the year and that is what we are hopeful for.

President Ramirez: Thank you. At this time Mr. Campion.

Mr. Campion: I'm sorry. I am Randy Campion with the building department.

Mr. Hurlburt: It's nice to meet you.

Mr. Campion: Nice to meet you. I guess I have a question, was it Shawn? I believe the procedures that your sign went before the Planning Commission to get approved. Where this property is located is in, I think it is in the corridor district so everything within 400 feet of route four gets reviewed by the planning commission and any new sign would go before that board to be reviewed. So the Planning Commission has the, it's an overlay district but it has the right to, like a PUD it has the power to approve the sign bigger or smaller, it is at the discretion of the Planning Commission. Your sign went through that process and that is why there is a difference in, I guess in the size of the sign that was there before, it is what they approve. Is that clear?

Mr. Hurlburt: Well maybe, yes and know. I apologize to be so vague with the objections but again do we, when do we get to the part where we know exactly why it is non-conforming?

Mr. Campion: Okay, it is non-conforming, the simple answer is it is non-conforming because the business came to an end and, I don't know that, I might be misspeaking here, on any sign on any business that goes out of business has to remove their sign within six months of the business going out of business and for that very reason, you have to take down a sign if the business is gone.

Mr. Dale: Mr. Chairman, may I speak?

President Ramirez: Yes sir.

Mr. Dale: First of all, for those of you who I have the not met my name is Greg Dale. I am with McBride Dale Clarion, I am sitting in for Anne McBride who would normally be here, she is out of town on business. I think the one point we are missing here is the non-conformity is because pole signs or pylon signs are not permitted in this district. So this type of sign is not a permitted type of sign in this district and that is what then triggers the requirement that once the business that the sign is serving ceases to operate for six months or more it loses that legal non-conforming use status. It is no longer a non-conforming sign it is now a sign that violates the zoning code. So the orders were issued based upon that and that was the basis then for the appeal. It loses that non-conforming use status after that six months.

Mr. Hurlburt: And again we are having an academic argument here and maybe why it will lead to common pleas court but if I had an eight panel pylon sign would you be out there telling panel three and panel seven that they had to physically remove those panels from an existing pylon sign if tenants were out of a strip center for eight months?

Mr. Dale: That is a hypothetical question I am not prepared to speculate about. What we have before us is an order that has determined that the Beef O' Brady's sign is no longer

Mr. Hurlburt: But again which is on the same pole same single structure. We are not, just to be clear for the record, we are not talking about two distinct signs here, we have got at best two boxes but on a single pole.

Mr. Dale: I understand.

Mr. Hurlburt: Okay, but the crux of the matter the non-conforming use is a pylon sign, his use is still non-conforming correct? It has been through the Planning Commission. If he wanted to build that new from the ground up you guys would not allow that?

Mr. Dale: That is correct. To be clear, his you are meaning the hotel?

Mr. Hurlburt: I am meaning the hotel.

Mr. Dale: That would be a legal non-conforming use, yes.

Mr. Hurlburt: Okay. But a non-conforming use that existed on the date the zoning code was enacted and continued as a legal non-conforming?

Mr. Dale: It is the discontinuance of the business that the sign is serving for six months that triggers the non-conforming use status.

President Ramirez: Taking in consideration that the Days Inn sign is approved and new should he be affected by the Beef O' Brady's sign, which is non-conforming.

Mr. Dale: I don't think so, no.

President Ramirez: So to get him conforming, what would need to be done with the Beef O' Brady's sign, because they are on the same pole? Could it be covered?

Mr. Dale: No and that was clarified I think with legal counsel and with staff. The determination that was made in the orders was that the sign at self, the physical sign had to be removed to make it in compliance.

President Ramirez: Any discussion from board members? Mrs. Emerson.

Mrs. Emerson: Thank you Mr. Chairman. I have a question I guess for Dale. When the Days Inn sign was approved through planning was not the Beef O' Brady's sign non-conforming at that point? I am just trying to get a time thing because if it was non-complying it would not make sense to me that the planning would allow the Days Inn sign to go on top of it.

Mr. Dale: Honestly, I don't know the answer to that. I don't know what the timing is, I don't know what the circumstances of the Planning Commission approval.

Mrs. Emerson: Well Beef O' Brady's has been out of business for how long?

Mrs. Sullivan-Wisecup: A year

Mrs. Emerson: So if the sign was approved three months or so ago, that is a terrible dilemma here. That is a lot of money.

President Ramirez: Mrs. Ghantous.

Mrs. Ghantous: Thank you Mr. President. Mr. Ramirez since you are on Planning Commission, at that meeting when this was discussed the Days Inn sign was there any discussion about the Beef O' Brady's sign at all the fact that they are on the same pole?

President Ramirez: As I recall we did not discuss the non-compliance portion we only approved the signage as presented as the owner said there is a difference in the design of the sign. It still met within the parameters of the size of the sign allowed for that property; taking into consideration, he had other signage on the ground also. So no, there was no discussion of that sign being approved on top of the Beef O' Brady's sign.

Mrs. Ghantous: So that never came up, that was not part of the discussion?

President Ramirez: Never did. Mrs. Emerson.

Mrs. Emerson: Thank you. I had a question to ask out here. You were talking about, are we leasing this piece of property or can you share what's going in there. It says it looks like you are leasing part of the property.

Mr. Wittkamp: Well at the time we made this application for this hearing we did not have a contract to purchase. Now we have somebody who has made an offer and that offer has been accepted to buy the building but their offer to buy the building is subject to them negotiating a lease with this restaurant group, which has not happened yet, this is all kind of been within the last week. We do have a signed contract by a Mr. Joseph who wants to buy the building, he is an investor but he is only going to buy it if he has a leasee basically.

Mrs. Emerson: And do you have a time frame on that?

Mr. Wittkamp: We are hoping to close up everything but the end of the year.

Mrs. Emerson: Thank you.

Mr. Wittkamp: Can I just mention also that it was my understanding that removing the Beef O' Brady signage was getting rid of the fact that Beef O' Brady's was there. I was under the understanding that we needed to blank out. Actually, I took it wrong, I told the sign company to black out and you would have thought they would have known better than that and they actually did that and I apologize for that. Once I saw that I quickly tried to do something that was more appropriate. I guess the panel could have been taken out if you can still vaguely see it, Beef O' Brady's if you really look hard but I don't think people would even notice Beef O' Brady's as being there. Thank you.

(background talking off mic.)

Mrs. Deusing: I have been the listing agent for the bank now for about a year.

Mr. Hurlburt: Can you state your name again.

Mrs. Deusing: Karen Deusing, Everest Real-estate. As you see in the original and the picture I submitted to you. Anchor Associates had the listing. The prior owner took it upon himself to hire Anchor Properties to try to lease or sell the building. He was unsuccessful so the bank hired Everest to try to sell the building. We have had a lot of interest in it. We have had everywhere from churches to Viking motorcycles to office users to a bus station. I talked to Christine Russell at length to try to get it. Mr. Joseph has for the last six months has wanted to invest in the property. He thinks it is a great piece of property. It has the interstate signage, it has the pylon signage. Because of being in the restaurant industry and specializing in restaurant industry, we really focused on trying to find a restaurant user to take the building because it is the highest and best use. So I proceeded to go after different restaurant users. The tenant that is going to go in there is a Mexican restaurant. They have been in business; his group has been in

business for over 13 years. The owner is coming from Wisconsin to invest probably, I am going to say \$400,000 into the interior and to the exterior, the signage and to the parking lot. They have a strong willingness to be involved in the city so we feel very comfortable in their ability to negotiate this lease and to get this in under a contract or a lease negotiated under leased terms with Mr. Joseph. He has been very patient. We have worked very hard to try to get it leased. We feel like the owner he has been in Mexico, he is coming back with the holiday here. They are going to be here on Monday or Tuesday of next week. The plan is here, basically we have agreed to the terms of the lease and it is just a matter of gathering the financials of the new owner out of Wisconsin who owns, I think, 13 restaurants, to have them connect to provide the financials. The contract states that there is a 30 day due diligence period for financing. He is working with the bank and he will be going through the bank, Spring Valley Bank to get the financing and then there is a 20 day due diligence on inspections so as you know the building is in good shape but in any purchase, especially in a restaurant we want to check the HVAC, the roof, the electrical but all of the equipment will stay inside the kitchen. Basically F, F, and E which is your furniture, fixture and equipment will stay. They are going to go in and paint. There is a few of the equipment that will have to be taken out just because it is outdated but the Ansel system is there. Everything is there. The nine TV's are there, the bar is there. Everything is there ready to go so we feel that the timing on this is with the holidays and everything that the goal is to close by the end of the year and then the tenant to go in and basically refurbish, paint, clean up the floors, make sure the equipment, take old equipment out and put new equipment in. Then we have a process where we have to get a liquor license through the state. It has to have a value of \$725,000 which we are working getting. Personal property real-estate property. It has to seat over 140 which it seats 210. There was one more thing it was the parking or something like that. I am working directly with a Dave Rabor at the state level to get the liquor license because it is kind of tricky because the tenant has to have an address so we are in the process to get everything wrapped up where we negotiate the lease, get the lease terms negotiated while Mr. Joseph is working with the bank to get everything financed. Then we close by the end of the month and then the tenant in the process is working with the state to get the license and we can work with a management agreement on that. So there is a lot of things that we are working on simultaneously to get this wrapped up. So we really appreciate the fact that if you guys could take the opportunity and also really the structural portion, United Sign, Tony Mayer is the president of United Sign, I worked for Tony for ten years. Tony installed the Perkins sign. It is well built. They used angle iron frame back 20 years ago where they physically

President Ramirez: Excuse me. I think we are getting a little bit off track. Really the purpose of the meeting is, this is an Administrative Appeal so our purpose here is to decide whether or not the action taken by the staff to file a non-compliance is correct or not. Although this board zoning appeals, we are not looking at a zoning appeal today. We are just looking to determine whether or not the actions by the staff were correct. I have a question to Mr. Champion. If at some time the non-compliant sign could ever become compliant if another business would go in in a short period of time?

Mr. Champion: The rule is if a business moves out that the sign should be removed within six months. It is on a pole sign, which are not allowed anymore. What is your question again? I'm sorry.

President Ramirez: Whether or not a non-conforming sign can ever become a conforming sign without tearing the sign down.

Mr. Champion: Well it lost it conformity, it was a non-conforming, we passed an ordinance that does not allow pole signs anymore. I guess it might be easier to refer to it as the signage. Like the signage that was on the building was required to come down within six months. I want to take the non-conformity out of this issue. Our issue is that the sign has to come down because the business has left for six months.

Mr. Hurlburt: Well back to my original point, I feel like with an integrated, we are proceeding under the non-conforming structure.

Mr. Campion: Sure.

Mr. Hurlburt: Which is where your zoning code comes from and when you have an integrated structure I just don't, honestly I feel like the building officers order was, okay tear down half of your structure, which I don't know if we call that arbitrary and capricious but I just don't think that that is a fair or in any bit reasonable reading of the zoning code. Especially in this case when we have another non-conforming sign that you guys, what this guy put right on top of it three months ago. It just doesn't make sense. So I am not sure whether you disagree in principal with my argument or not I think between those two things again and you are right we are here on the building officer's decision whether or not that is correct and proper. Like I say either one of those two reasons I'd say no we think it was fairly arbitrary.

President Ramirez: Mrs. Emerson.

Mrs. Emerson: Thank you chairperson. So if we take down the Beef O' Brady's signage, does the Days Inn go on top of that pole? Is that what, then we must have Okayed the pole to be there correct? Because if you are allowing the Days Inn to be on top of that, that means that pole is okay to be in the corridor for the Days Inn sign. Is that right?

Mr. Dale: Yes because the Days Inn would be continuing its legal non-conforming use status. It did not lose its non-conforming use status due to the business being discontinued for six months or more. That's happened with the Beef O' Brady's.

Mrs. Emerson: So what our zoning code is saying is that the Beef O' Brady's needs to take their face sign down, the pole stays for the Days Inn. Am I hearing that right?

Mr. Dale: Yes. It is not just the face though it is the cabinet structure.

Mrs. Emerson: Right, that is the big round that says Beef O' Brady's, but the pole stays?

Mr. Dale: But the pole would say to support the hotel sign because that has retained its legal non-conforming use status.

Mrs. Emerson: Which means the pole is staying?

Mr. Dale: Yes.

Mrs. Emerson: Okay. Thank you.

Mr. Bowy: It has been mentioned before, the letter from the sign company, they are the ones that put up the sign thirty some odd years ago. Their opinion is that the Beef O' Brady's cabinet, because it is welded to the actual pole that is currently there, that the pole is going to have to be cut which is going to jeopardize or the integrity of the pole could come in question which is then going to affect my sign that is up there as well. I am not sure if this is the right place to say it, I guess at the end what we are really trying to figure out is even though Beef O' Brady's is no longer there, there is a new tenant going in, will that new tenant have the opportunity to put a sign on that pole? If so, can they use the current cabinet that is there and reface it?

President Ramirez: Mr. Dale do you have an opinion on that?

Mr. Dale: There are two issues. First of all, let me take the second question first. My understanding is that they would not be able to because again they have lost that legal

non-confirming status unless they came in and requested a variance or some other kind of approval that they have not requested which is not before you, they would not be able to. Let me go back to the other point that the gentleman made about the United Signs. They have submitted this letter, we have just read it while we are listening also I don't even know if all of you have that before you. They are making a claim that essentially from a structural perspective they can't do this without creating a structural integrity for the sign above it. That is a factual issue that has been placed before you. I don't have the professional training to be able to read this letter and tell you whether or not that is true or not but that is something that has now been put before you. I think I just wanted to highlight that.

President Ramirez: Mr. Nienaber.

Mr. Nienaber: Thank you Mr. Chairman. I guess this is aimed at everybody in the room. It looks like we have got two problems here. One is a sign that has lost its non-confirming status that is part of what is making this site attractive to the potential new user of the site and at the same time this panel is not even in a position to grant a variance. All we can do is either say we agree that the city wrote the letter correctly or not. At least from everything that I understand the city is well within its right of saying that that part of the sign has to go whether that is physically possible or not. My hope would be that there is a middle ground that we have nothing to do with but that the city has an economic development person and I would think that she would be involved here in trying to get a mutual agreement between the seller, the potential lessor, the potential lessee and the city to get all of this rectified. It is all outside of our area of influence.

Mr. Hurlburt: I appreciate your comment and I am sorry to beat a dead horse but the more you talk the more I realize that I don't think I have made the point. Because I do think it is easy to see this argument if we had a two family house in an area and it was non-confirming and you are only supposed to have a single family home, if one half of that house was occupied and the other was vacant for three years, we have blown past the six month deadline, the zoning code would not let you tell me to tear down half my house and I don't think that fifty percent usage get you guys to abandonment. I don't think that's a reasonable reading of the code. So to your point Mr. Nienaber you said well it seems like the city is well within the rights to tell us to tear it down, maybe I am dead wrong but I don't think. You said it in a way it is like I just can't see any other possible interpretation and like I said I am trying to lead you there by analogy. I feel like you are telling us to tear down half of our house and it is just

Mr. Nienaber: Actually, I am trying to say this is not our decision but that the city should, I would think, want that to become a successful property and we have a person on the payroll that might be your ombudsman for that matter. With regard to your tearing down or not, it was only last year, in the past year that we had an issue with two houses on one property and the second house lost its non-confirming status and we had to tell the guy, you can't use it as a house anymore.

Mr. Hurlburt: In a fair interpretation, not an integrated structure. I feel like we are dealing with something entirely separate here. But you are right economic development may give us another option but for our purposes here tonight it's a question whether or not, honestly I feel like the question here is if we stop using fifty percent of something, does that get you guys to the abandonment threshold necessary to say that we have lost our non-confirming use. My argument is that no it does not. I don't think if we were dealing with something other than the sign that maybe it would be that hard to see but that's, well I lead with that that's my main point.

President Ramirez: Mrs. Wisecup.

Mrs. Sullivan-Wisecup: I hear what you are saying, however; what we are looking at is exactly what Mr. Nienaber said. When they wrote this violation, were they correct in their violation. Their violation says that if business is gone for six months that sign has

to go. We don't care about knocking down half of a house; we don't care about anything else. What we are looking at is, this sign, which was a legal non-conforming sign until that place was vacant for six months. No that it is vacant for six months, that is now a non-legal, it is not legal anymore it needs to be knocked down. I feel so bad for you because you were allowed to have the sign on top, that's where my personal problem comes into it is to make sure that is going to be structurally okay for him after that, if that sign is removed is he still going to be able to have his sign there that he was legally allowed to have there and that because he's still in there. I just want to make sure, is there any way that we could have our engineers look at it, is there any way to table this? What do we need to do on this?

Mr. Dale: Mr. Chairman if I could? A couple of things. What I would suggest, having been through a lot of these kinds of proceedings is perhaps, I think what would be a little more orderly let's make sure that the applicant has had the opportunity to have everything that they have to say and then have the discussion focus on you as opposed to what ends up being kind of an open debate which is not very fruitful. You might consider that. Secondly, what I would do is simply point out in fairness to the legal counsel, which is making the language argument, if you look on the staff report that Mrs. McBride put together, on that first page, she quotes section 153.462. Everybody have that? If you look on sub paragraph C that very first sentence I think is a very operative language here that is being raised and I appreciate the effort to make analogies but we are not talking about houses, we are not talking about theoretical things, we are talking about this language is what is before you. So, I would just try to focus your attention on that. With regard to the third question, I think that is a fair question. If the board comes to the conclusion that even with applying this language and even with assuming that everything that the staff has done is appropriate that there is an effect here that you are concerned about, again I don't think either one of us are in a position from a staff prospective to evaluate whether or not you find this to be a compelling argument or not. So the possibility of tabling this and having a structural engineer look at this, the individual that wrote this letter is not here so you can't ask him questions about it as well. That is not an unreasonable request to be asking. Again, I would suggest that the language under that sub-paragraph C appears to be pretty clear in terms of the strict application of the code.

President Ramirez: Thank you. Is Mr. Campion, we have done this before when it was required to take down a pole sign. What is the time period they are allowed to get that completed?

Mr. Campion: It was six months.

President Ramirez: Six months.

Mr. Campion: From the date of when the business vacated the use. We are past that.

President Ramirez: Six months from the time that they received the notice?

Mr. Campion: Well In this case yes, six months from the notice, but the code says once a business moves out they have six months to remove the sign.

(someone speaking in the audience off mic.)

President Ramirez: We will try to get through the panel here and we will let you come back up. Mrs. Emerson.

Mrs. Emerson: Thank you. Who's going to, the Beef O' Brady owners, that company, they are responsible to get the sign down and pay the money to get that sign down? Who's responsible and who pays for the sign to get the Days Inn put back in? Is that Days Inn responsibility or is that going to fall on the owner that took it down?

Mr. Dale: I don't know what the arrangement with the ownership and code locating on the pole that is. I don't think that is a city issue. I don't think the city can answer that question.

Mrs. Emerson: I mean we clearly okayed the Days Inn sign to go up and he paid money to get that sign put up correct? So I would hate to charge him more money to put it back up again after we okayed it to go up.

(people talking in the audience off mic)

President Ramirez: So another point we possibly could rule on this whether the administrative end or not and if indeed it is five or six months you may have time to come back and appeal and request a zoning variance. Not saying that anything is going to change but I don't know this is the first time that a dual sign has come before the board since we changed the zoning. Any thought on that from the members whether that will be a viable avenue to go down? Mr. Nienaber.

Mr. Nienaber: Thank you. I believe the way, what she has on her screen there is reading that they have five months from when they get notified. Their thinking that they are going to have the place leased before the end of the year so that is certainly more than finding a way sooner than five months from notification. At that point they need to be throwing themselves at the mercy of planning and whoever else it takes to get that non-conforming thing reversed. That's not within what our powers are. I don't think, it is not like it has to come down tomorrow is what I am saying, they have time to figure it out.

President Ramirez: Okay now if you care to.

Mrs. Deusing: The bank did not take, the owner was there a notice sent out to the owner of Beef O' Brady's that he was supposed to take the pole sign down? He took the letters down.

Mr. Champion: I believe the first notice, I don't know about. The pole sign was dated May 24 of this year.

Mrs. Deusing: Right but the bank, the owner, they closed but you did not take it over till December and he closed, we don't know when he closed so did the notice go to the Beef O' Brady's guy, the letter because did you get a notice that it was six months? I guess the point being is that we thought it was a year but where did the notice go to if it went to the Beef O' Brady's guy

Mr. Champion: On May 24 it went to Spring Valley Bank, and that is the owner of the property.

Mrs. Deusing: But we didn't, he didn't, when did

Mr. Champion: You didn't own it?

Mrs. Deusing: Okay you owned it, this May. But how long has he been closed? I guess we are trying to get timing here.

Mr. Champion: Well there was some signage on the building. I am the building inspector. I probably sent orders to Beef O' Brady's. I am not sure about that I might have sent that to the bank.

Mrs. Deusing: So there is kind of a question there where did the letters go.

Mr. Wittkamp: I'm Dave Wittkamp again Spring Valley Bank. I received a letter from Mr. Champion and the letter just stated that the Beef O' Brady's signage needed to come

down. It was very general letter. Middle of winter, I called him and asked him about it and so from that, I believed that we had to get all of the building, anything Beef O' Brady's needed to come off was my understanding based on my follow up call. So then I did get everything except I did not get the thing, what I thought was going to be blanked out because you needed a pole truck and everything else for the rest of the signage, I could have somebody with a ladder take it down. Again, I want to cooperate, I am not trying to cause any problems. So then this letter comes in May and I get it and I briefly look at it and I said wow they gave us five months to finish everything up, five or six, whatever it was and I just put it aside. I didn't really, again I had talked to him about it, I'd received the notice, I knew the signage needed to come down that said Beef O' Brady's and that is all I took from that. It was not until September, I get a letter saying, hey, you were supposed to take this down, if you don't take it down we are going to take action. So that has kind of set this whole thing up. We want to be reasonable. Is this sign cabinet that's just white hurting the City? We are trying to get this property developed and again all I ask is to be reasonable. I understand rules are rules and you have to follow them. There is not a lot of these signs in the City of Springdale and this sign is more at an expressway interchange, it is a little bit different than what you would normally have in your other signage and I hope you take that into consideration.

Mr. Dale: Mr. Chairman?

President Ramirez: Mr. Dale.

Mr. Dale: Just for the clarification of the board the May 24th letter that was just referred to let me just read some of the operative language because I do think it is clear and it reads in part that "you are hereby ordered to remove the sign cabinet from the supporting pole located on the city property adjacent to your property within five months of the date of this order. Failure to comply may result in the city removing the signs at your expense." And that is what is provided in the zoning code. The letter that was followed up, was from Mr. Taylor, the Building Official. The September 29th letter that was referred to was in fact following up on what the zoning code provides that if the property owner does not remove it the city can remove it and recoup expenses. That was simply following the language and procedures of the zoning code.

President Ramirez: Any other discussion? Mrs. Emerson.

Mrs. Emerson: Thank you. For the Days Inn owner, do you know exactly when you came before the board, the planning to get that sign okayed? What month?

Mr. Bowry: My sign vendor actually did that I was not here for that. I did not personally do that, that was my sign vendor.

Mrs. Emerson: Thank you.

Mr. Bowry: That was probably in Juneish. It was this summer. Mid-summer.

President Ramirez: Mrs. Ghantous.

Mrs. Ghantous: Thank you Mr. President. I think that clearly the Building Official did his job. He read the zoning code and he took action as stated in there. So I don't have any question about that. I do have a little bit of a problem with the Days Inn part of it. If that sign was already illegal and that part of the discussion never came up, something has to be done to protect this man and his investment in that sign. So in my mind it is two separate things. The Building Official did his job, there's just no question about that it is very clear, except that something else happened that could be very detrimental to our new neighbor at the Days Inn and I think that somehow we need to come together and work so that he doesn't end up being punished because the fact that his sign was

approved when this other sign was already non-conforming, already illegal, already did not meet the code. That is not his fault. So for me it is two separate things and we are not ones that would handle the Days Inn part of it but as a Council member I know that I will be way in favor of making sure that his investment is protected. So for me it is two different things, the Building Official did his job now the secondary part is we need to take care of this guy and his business and his investment in that sign.

President Ramirez: Thank you. Mr. Campion.

Mr. Campion: There is a couple of different points that I want to make here. The Springdale Inn & Suites never lost its, we have a non-conforming sign but it never lost its non-conforming status because you went from one business closed and within six months you own the property. Okay. So I mean the hotel went from one hotel to another it was a continuation of that use. It had never stopped. There was allowed to be a sign for your business. You went to the Planning Commission, you got your sign approved and the sign was put on. So that's the only issue that the board needs to determine today is did the Building Official act properly. I mean that is what we are here to decide. The third issue would be our City Engineer or an engineer needs to, this letter is new evidence that I have not seen before, determine if the ring around this sign is essential structure of the pole. So there are different issues before this board I think they need to determine if the Building Official made the correct decision and then the other issues need to be addressed.

President Ramirez: Mrs. Emerson.

Mrs. Emerson: Thank you. To the hotel owner, when you or when your company went ahead in front of the Planning committee were you told at any point that the sign that you were going to put your sign on top of another sign, were you informed that it was non-compliant because I would think if you were you would not have spent the money to put on top of that sign only to know that it was going to be torn down and you were going to have to put more money into it to put it back on.

Mr. Bowry: That is correct, I was not informed.

Mrs. Emerson: So, were you given all of the information when you put your sign up there.

Mr. Bowry: I was not informed of that prior.

Mrs. Emerson: Thank you.

President Ramirez: Mr. Campion.

Mr. Campion: I want you guys to understand that the hotel did not lose its legal non-conforming status because one business moved and the other one came in. There never was a six month period where it vacated that property. Okay alright.

President Ramirez: Mrs. Wisecup.

Mrs. Sullivan-Wisecup: Okay I have a question. If our engineers say that there is no way that the pole sign will be able to be okay if that ring is out, then what do we do?

(talking off mic)

Mrs. Sullivan-Wisecup: If our engineers look at that and they say if this cabinet is taken out there is no way that his sign will be okay what happens then just out of curiosity to that?

Mr. Dale: I would have to look at it more but I think that the answer is that would potential be the subject for a request for relief in the form of a variance or some other sort of action. But that again, what we are all wrestling with here I think is that is not what is before you.

Mrs. Sullivan-Wisecup: Right. I know we are all playing what if, what if, what if, but I guess we are just trying to make sure that this guy is not going to get the short end of the stick because we have to do our job up here which is say whether or not this is correct. Thank you.

Mr. Bowy: What I am getting ready to ask or again is probably outside of the scope of this but you had mentioned that I had asked the question is if the new tenant comes in and is allowed to have a sign which according to current code they would not, I think there is two things for me here. One is I am just trying to protect my sign and my investment but it is also having a viable, restaurant on that corner is going to do wonders for my business and it is a reciprocal agreement a reciprocal relationship so I am very interested in wanting whoever the restaurant that is coming in to have a sign so my question is, let's say the engineers look at it and say yes we can remove the cabinet without interfering with the Days Inn sign, does that mean that the new tenant coming will have no option to or would they, would we be able to file a variance or a zoning appeal to then get them signage on that pole?

Mr. Campion: It's in the Route 4 corridor so the new tenant would apply with Planning Commission Just as you did with your sign. Planning Commission has to the power to grant a sign there or say you can't have a sign there. It is totally up to them. But there is an avenue for them to go to.

President Ramirez: Anyone else finally? Just to sum it up, I believe that we all know that we want the Days Inn sign to be there and he has put a lot of money, effort and time into that business and he needs the visibility of that sign. What is question today is the Beef O' Brady's sign below that whether or not it is in non-compliance and whether the city official was incorrect sending a notice that it has to be removed. So that being said, I am going to take a vote unless there are any other comments on whether or not you agree this is an administrative that Mr. Taylor was correct with his violation. Mr. Campion.

(background talking off mic)

Mr. Campion: I think we need to either read Anne's finding of fact into record or it has to be accepted.

President Ramirez: We don't need a motion though right?

Mr. Dale: I think this is just a question of the record. Mr. Chairman what you have before you is the staff report. I think typically these do not have to be actually physically read into the record but I think as long as it is acknowledged that the staff report is part of the record. I think you all have had a chance to read it if you have any questions I think we have covered everything that is in here at this point. So normally I would present this but I think we have essentially already done that. I don't think that there is any reason to repeat it. It is there as part of the record referring to the November 21, 2017 staff report.

(A copy of the staff report has been attached to the minutes.)

President Ramirez: Just to clear that up a little bit, this is pursuant to section 153.452 section c of the zoning code of the City of Springdale where the tenant is order to remove the Beef O' Brady's sign cabinet from the supporting pole located on the city property adjacent to your property within five months of the date of this order which was May 24, 2017.

Mr. Dale: With a follow up of September 29, 2017 order as well.

President Ramirez: Thank you. Mr. Nienaber.

Mr. Nienaber: Thank you Joe. I just want to cross all of the t's and dot all of the i's as section 153.462(c) you had said five two I just wanted to get it corrected. I think we are all prepared to vote.

President Ramirez: Okay. Ms. Secretary poll, we are voting for yes to approve or no that he is incorrect. Yes that Mr. Taylor is correct and No that his is not correct.

(Ms. Morsch as acting secretary polled the board and the vote was 6-0 upholding the decision of the Building Official.)

President Ramirez: Did you have something Mr. Campion.

Mr. Campion: Yes. I was thinking that as a point of record that you had to make a motion.

(someone talking off mic.)

President Ramirez: I read the statement but since it is not an appeal it is just a statement whether or not he was correct.

Mr. Dale: Mr. Chairman I think that it accomplishes the same thing but I do think a motion to affirm the staff decision is what would be in order. I think it accomplishes the same thing but if the board typically operates with motions, does the board typically operate with motions?

President Ramirez: We do with appeals.

Mr. Dale: Well this is technically an appeal it is just an Administrative Appeal it is not a request for a variance. If that is the way that the board typically operates I would suggest that you do it as a formal motion with second to affirm the decision of the administration.

President Ramirez: Mrs. Sullivan-Wisecup.

Mrs. Sullivan-Wisecup: I would like to make a motion to approve the Cities findings on this with the 153.462(c).

President Ramirez: Mr. Nienaber.

Mr. Nienaber: I second the motion.

President Ramirez: Ms. Secretary please take a pole.

(Ms. Morsch as acting secretary polled the board and the vote was 6-0 upholding the decision of the Building Official.)

President Ramirez: All that we have done here is just agreed with the city official on removing the Beef O' Brady's oval channel sign. Nothing to do with the Days Inn sign or the pole. I guess in question next is for somebody to do their homework on whether or not it is able to be done, take out the Beef O' Brady's without damaging the pole but that is beyond our scope here.

Mr. Dale: Mr. Chairman, with the potential for consideration of other relief that could be requested potentially in the future.

President Ramirez: Correct. You still have the opportunity to come back and ask for a zoning appeal as well. All we are doing is ruling on the city officials notice.

Mr. Hurlburt: Thank you.

President Ramirez: Thank you.

Mr. Hurlburt: Thank you for your time.

President Ramirez: Hang on we are not done folks.

IX DISCUSSION

None.

X ADJOURNMENT

President Ramirez: Do we have a motion to adjourn?

Mr. Nienaber: So Moved.

Mrs. Emerson: Second

President Ramirez: Vote (verbal vote all in favor 6-0 to adjourn)

Respectfully submitted,

_____, 2017

Chairman, Joseph Ramirez

_____, 2017

Secretary, Carmen Daniels