

PLANNING COMMISSION MEETING

April 9, 2013

7:00 P.M.

I. CALL MEETING TO ORDER

The meeting was called to order at 7:00 p.m. by Chairman Don Darby.

II. ROLL CALL

Members Present: Carolyn Ghantous, David Okum, Richard Bauer, Tom Vanover, Robert Diehl, Marge Boice and Don Darby

Others Present: Jeff Forbes, Law Director; William McErlane, Building Official

III. MINUTES OF THE REGULAR MEETING OF MARCH 12, 2013

(Mr. Vanover moved to adopt the minutes of the March 12th, 2013 Planning Commission Meeting; Mr. Okum seconded the motion and with seven “aye” votes from the Planning Commission Members the minutes were approved as written.)

IV. REPORT ON COUNCIL

(Mr. Vanover gave a summary report to the Planning Commission Members from the April 3rd Springdale City Council Meeting.)

V. CORRESPONDENCE

Chairman Darby: You received the updated Zoning District Map and the letter to Council proposing the Zoning Code Text Amendment for Special Event Signs.

VI. OLD BUSINESS

(No Old Business presented at this meeting.)

VII. NEW BUSINESS

(No New Business presented at this meeting.)

VIII. DISCUSSION

Chairman Darby: Before we get into discussion, I want to welcome Mr. Jeff Forbes, legal counsel for the City of Springdale.

A. Chairman Darby: The topic for discussion is political signs text amendment.

Mr. McErlane: If I could kind of give you an idea of where this started; over the years we have been told by the Law Director to not enforce portions of our existing text for campaign signs. Currently our text has a section for political signs which are basically free speech signs and then text that refers to campaign signs. Over the years we have been told, because of case law, that we shouldn't be enforcing certain portions of the campaign sign text particularly with regard to time limitations. We really haven't had much in the way of challenges for size. We also have some language that says you can only have one per candidate or issue on a piece of property and I am not sure if we have been challenged on that one but we have kind

of laid off of that one, as well. I have asked the Law Director if we could look at coming up with new language that we could enforce, if that meant deleting most of what we currently have or whatever. At least we would have text in the code that we could enforce and I presented his change to you last month and you had questions that you wanted to pose to him.

Chairman Darby: I am going to open it up to the panel at this time or if you Mr. Forbes, would like to make an introductory statement about your thought process as you went through this.

Mr. Jeff Forbes: Yes; Mr. McErlane is right, the case law in this particular topic on political signs and campaign signs changes all the time. So, what we have done when certain cases have come out, we would talk to Bill in his office and say that you better not enforce this provision because certain cases have come out and said that you can't do that anymore; for instance the time limitation, we have something in your code now that basically talks about Labor Day being recognized as the beginning of the campaign season. Well counsels have now come out and said that you can't do that anymore. You cannot have a durational limit because these signs are an expression of free speech protected by the first amendment and you can't put an artificial time limit on that. Part of the problem is we have seen this change over the years from somebody putting a sign in their front yard that said "elect so and so" and now people have signs in their yard that say "bring home the troops" or whatever their political thought may be; so the concept of limiting it to election time, the courts have now said that really doesn't make a lot of sense. That is one of the suggestions that we made to remove that. What communities did because they can't limit the time, they said maybe we will try to limit the number so now you can have one sign per candidate or per issue that is going to be on the ballot. Courts started to say that doesn't help the "stop the war, bring home the troops" sign. Your code also provides that everybody gets basically what I call the one free speech sign; you can have one for a candidate and you can still have something that is not related to a candidate or an issue. Well, courts have now told us that you can't do that; by limiting the number of the signs it is still an impermissible regulation or restriction of somebody's first amendment political speech rights. What you have is something that we proposed, so instead of telling Bill's office "don't enforce that anymore", we thought we should actually clean up the language. So, we have removed the things that the courts have told us you can't do anymore but what we tried to add was a little more regulation talking about square footage, that each sign has a limit; we can't tell how many signs you can have but we can put a total square footage; what is proposed in your draft, I think, is 64 s.f. There is nothing magical about that number other than the standard sheet of plywood is 4' X 8'. In the time that we drafted this, submitted it here, the Federal District Court in the northern district of Ohio has issued a decision in February, so by the time it came out and people saw it, it has been about a month and a half ago. It was with the City of Garfield Heights which I think is right outside of Cleveland where they also had a square footage limitation that didn't withstand the challenge, it failed the constitutional challenge. I will briefly explain why; what the court has basically said if you have a regulation in your code that is specific to political signs or campaign signs then that regulation is what the lawyers call content based. That basically means if you have a whole bunch of signs around town or in residential districts, you have to actually look at the sign, read what the content of the sign is to decide if these political sign regulations would apply and when regulation is content based it is a little harder to withstand the challenge because when a court looks at it, it is a higher level of scrutiny; it is a harder test for the government to pass.

Chairman Darby: We have been drilled over and over to stay away from content when it comes to signage.

Mr. Jeff Forbes: Well, what communities in all of Ohio have done, historically is to have a section in their code about political signs. What we are seeing, as each decision comes out, is that we thought we could limit how long you could leave it out and they told us "no, you can't". Then we said we will limit how many and they said "no, you can't". Now, we have said we will limit the square footage that you can have and now this court has said "no, you can't". If the regulation is based

on the content of the sign then they have to meet the really toughest burden you can. So, what some communities have started to do is they won't regulate political signs at all. They don't carve out any special restrictions or regulations for political signs. They treat them just like any other temporary sign that would be in that district; that could be a "for sale" sign or whatever other classes of temporary signs that you have. I can answer questions about the draft that was presented to you and I am happy to do that but given that this court decision has come out, what I am suggesting is that maybe we take a step back. What we are proposing is different than what Garfield Heights did in the specific; but in the general sense we are sort of doing the same thing and I don't want to lead you down a path where we would have to do it all over again. My suggestion is that maybe you step back and let us go back to the drawing board and see what we can come up with maybe with the concept of not referencing political or campaign signs at all anymore to see if we can come up with some more basic temporary sign regulations.

Mr. Okum: One court decides law; one court decides how the law should be interpreted? I understand how that happens but they are not legislators, they don't write the laws but it seems like one court, Garfield Heights decides what the case interprets. And probably by doing that it makes you think a little bit more about it. Personally, I think on a temporary sign basis it would be more fairly administered. It would be a lot simpler for Staff because like the Chairman said, you are not looking at content but a temporary sign use and a temporary sign placement. I would agree with withdrawing it from consideration, would be the best thing to do and let it purge itself a little bit. The only thing that I would like to see is in the wording; my recommendation would be where it says "such sign must be removed", I think the administrative authority should have the right to remove. My concern is we should be able to get rid of it but on the other hand we can't go on people's property and take it down.

Mr. McErlane: I understood for years that the courts have held that commercial speech does not hold the same protective rights under the constitution as non-commercial speech. If we were to write something, it would seem to me that we should at least be able to distinguish between commercial speech and non-commercial speech, such that, since we can't limit the number of political signs that we don't have a situation where we can't limit the number of real estate signs on a piece of property; since it is commercial speech. Maybe that is where we draw the distinction between the two.

Mrs. Boice: At the last meeting I made the remark that this type of thing, particularly the political signs could certainly be controlled by the homeowner. I made the point since the last meeting of talking to a number of homeowners that I know, who are very generous with their yard space for signs, and when I explained to them that this could be much longer than forty five days, they are going to take the same approach as I am. I have always been generous with my sign space particularly for the candidates that are running in Springdale but I am done. If you were only going to do it forty five days behind, that would be fine.

Mr. Vanover: On the case law, we can pretty much track back to about 1940 or 1945 when we stopped looking at constitutional law and rolled over to case law and I don't think it has been a good thing. When we get into the state and federal level, they are still campaigning; when does it end. Those are the guilty parties as far as going down the interstate and seeing their signs there 3 months, 6 months after the fact. The local, I have always been impressed and proud to be associated because the day after voting the signs are gone, except in a very few rare cases. In not dealing with content, I have a problem; who then determines what content is for the good of society because there could be somebody posting sexting on cardboard out there and we can't do anything about it. That tells me that they are taking it out of our hands, our local jurisdiction and we are a home rule state.

Mr. Jeff Forbes: I will address just that part. All of the decisions that talk about content based regulations say that the government can still regulate speech, even if it is a content based regulation. In order to do that you have to meet a really high burden, you have to show that it is a compelling or substantial government interest

so it has to be a really important reason and the regulation itself has to be the least restrictive thing that you can do. When it comes to signs this Garfield Heights case is a 19 page decision from the Federal Court, agree or disagree with it, it is actually very well laid out and discussed. What that city argued is we do have a very important interest; one is the aesthetics of the neighborhood and the other is traffic safety because the number of signs obstructing sight lines. The problem the court said when it comes to political signs, you treat them differently than you do other signs in this district and in other districts; so the argument that you are doing it for aesthetics and for traffic safety doesn't hold up because you allow other signs, bigger signs and more signs in other areas. It is not that they said that you can't regulate it but if you are going to you have to meet this really high bar and when it comes to political signs, this court has said aesthetics and traffic safety don't meet that high level, at least in that particular case, when you look at how it is compared to how you treat other signs. What Mr. McErlane said is right, there is a distinction between commercial speech and non-commercial speech, commercial speech does not get as much protection. If you think of it like on a spectrum, commercial speech not getting as much protection and on the other end is political speech. What the law has always said is that political speech gets the most protection you can. What you are talking about falls somewhere in between and you have a good ability to regulate other types of speech but when you start getting into political types of speech like this regulation, it is a really high hurdle.

Mr. Diehl: Mr. Forbes tells us what we can't do, the only thing that I hear that we basically can do is control the square feet of one sign.

Mr. Jeff Forbes: No, not after this Garfield Heights decision. Not if you treat political signs differently than regular signs.

Mr. Diehl: Looking through it says that no sign can exceed "X"?

Mr. Jeff Forbes: Today, I would tell you that you should be able to do that.

Mr. Okum: So what you are saying, Mr. Forbes, we remove this from the agenda and send it back to our legal counsel for further review.

Chairman Darby: At this point, what would be the basis of that review; a time issue in terms of any developments on the recent decision?

Mr. Jeff Forbes: I would want to see what the status is of that case; it is so recently decided that I would want to see if it has been appealed, if there is a chance that it would be overturned or if that is going to be what we have to abide by. Another thing is to spend some time realizing the limitations we have. What I am suggesting is that it may be time to not just keep changing your political sign section but do more of a different paradigm about how to address this.

Mr. Okum: The fact is that the decision made in Garfield Heights by the federal court may be a logical reasonable consideration that brings about thought that will bring about a piece of legislation, whatever it comes out that is better than passing something now that we know there is pending litigation or pending action that is occurring.

Chairman Darby: Is there any other Member of the Commission or any Member who has spoken or who has not spoken that would like to ask questions of Mr. Forbes while we have him here?

(At this time, the Members of Planning Commission presented no further questions for Mr. Jeff Forbes.)

Mr. Okum: Mr. Chairman, based upon the information provided, I move that the issue regarding signage be withdrawn from the agenda until such time that our Law Director and Staff have researched the conditions and litigation that is ongoing regarding the subject matter.

(Mrs. Boice seconded the motion and with a unanimous “aye” vote from the Planning Commission Members the discussion item was withdrawn from the agenda.)

B. Chairman Darby: The next item for discussion is Recreational Vehicle Regulations.

Mr. McErlane: At our last meeting, you decided to form a subcommittee or an ad hoc committee to review the RV ordinance. The committee consisted of Mr. Diehl, Mrs. Ghantous, Mr. Okum, Anne McBride and I. We met approximately two weeks ago and discussed a number of issues relative to size and location and whether they should be permitted in the front yards or side yards. At the end of the meeting we resolved, and I will ask the subcommittee members to comment, that we were going to recommend to Planning Commission that they recommend to Council a modification that would prohibit parking recreational vehicles in the front yard and would remove the limitation on size. The text that you see before you will allow one RV of no restriction on size, to be parked in the side or rear yard five feet from property line; as the text currently reads, on an improved surface. I will defer to the other committee members for any comments on how we came to that decision.

Mr. Okum: I think we have gone 360 degrees, based upon experience and time. Back in the 1980's we had an enormous amount of input from the community and it took a long time to bring about recreational ordinance that could be functional in the City. I think what we have experienced and seen is the impact of the existing zoning regulations as it pertains to the City of Springdale and how it affects residences and neighbors. Based upon that, it was the committee's recommendation to eliminate the parking of RV's in the front yards in the City of Springdale. Allowing open size application to rear and side yards, maintaining a five foot setback from the property line; the reason is that it applies to the same logic as storage sheds which is currently in our code. The logic says that if you are going to store a device or implement in your yard, you maintain that five foot setback from the rear and side yard. Storage sheds are regulated by height but the height is regulated by the height of the house so you are parallel with both applications. Looking at overwhelming evidence from a good number of communities that are adjacent nearby in our region, it is reasonable to assume that we are a small stone in a big yard with this existing front yard permission. I would encourage supporting this change in the legislation and bring it forward to Council.

Mrs. Boice: I was particularly delighted to see the front yard situation removed. As you said, when you look at the surrounding communities that are very close to us such as Glendale, Sharonville, Forest Park, none of them have ever allowed the front parking. I also want to thank the committee and the support people from the City for the wonderful work that they did on this. For you to take the time out and do this, because you are busy, I truly appreciate the fact that you did that.

Chairman Darby: So, Mr. McErlane, what exactly do you need from us at this time?

Mr. McErlane: You need to make a recommendation, if you are in agreement, to City Council for adoption of this amendment.

Chairman Darby: The Chair will receive such a recommendation.

Mr. Vanover: So moved.

(Mr. Okum seconded the motion and with a unanimous “aye” vote from the Planning Commission Members the item was approved to be referred to Council for adoption.)

IX. CHAIRMAN'S REPORT

Chairman Darby: You can see there were four signs approved.

Is there anything further from the group to be shared at this time?

Mr. Vanover: On the Council report, we did approve the district boundaries and Mr. Diehl has the final plan.

Mr. McErlane: Regarding the RV text, if the Council decides to pass this ordinance, it basically means that every RV parked in the front yard today is a legal nonconforming use; "grandfathered" at least until they remove them for six months and then they lose that legal nonconforming use. We will have to log every one that is out there and try to keep track of them.

Mr. Okum: Because Mrs. Ghantous was on the committee and Ms. McBride was there, there was a lot of analysis that went into the rules of the zoning appeals and how that would impact the Board of Zoning Appeals in justification for a front yard parking location. Based upon Staff's opinion there were no warrants that would support a variance granted for that front yard parking.

Mrs. Boice: Mr. McErlane, now that we are going to remove them from the front yards, I don't know how many in the City that we have but I am fully aware of one; are you now going to be approaching these people and telling them that they have to move them or are they going to be grandfathered?

Mr. McErlane: They are grandfathered unless they have had a variance; then they could be there indefinitely.

Mr. Okum: But the variance still stays.

Mr. McErlane: Those that have a variance are allowed to remain indefinitely.

Mrs. Boice: So, you will be checking to see if they have a variance?

Mr. McErlane: Those that have a variance, we will have a record of that but those that do not have variances they will be grandfathered unless they remove them for a six month period of time.

X. ADJOURNMENT

Mr. Vanover moved to adjourn; Mr. Okum seconded the motion and the meeting adjourned at 7:38 p.m.

Respectfully submitted,

_____, 2013 _____
Don Darby, Chairman

_____, 2013 _____
Richard Bauer, Secretary