

Item 6

GENERAL INFORMATION

Applicant: City of Bloomington
Location: Citywide
Request: City Code Amendments - Billboards

PROPOSAL

Previously the Planning Commission and the City Council approved amendments to the City Code that reclassified billboards from temporary conditional uses to interim uses. The billboard companies and the property owners objected to this re-classification arguing that the billboard use permits were permanent conditional use permits because the City lacked statutory authorization to impose any time limit on the use. All of the interim use permit applications for the five existing billboards were due on August 6, 2009, when their temporary conditional use permits expired. Instead of filing for interim use permits, the billboard companies, along with the property owners brought a civil lawsuit against the City of Bloomington seeking a declaration by the court that the interim use permit ordinance is unenforceable and seeking monetary damages, as well as costs and attorneys fees.

Since the filing of the federal lawsuit attorneys for the plaintiffs have met several times with attorneys for the City. After careful analysis of the City's regulatory goals and experience with respect to billboards a tentative settlement agreement was reached pursuant to which the lawsuit against the City would be dismissed with prejudice and without any award of costs or attorneys fees to any party. Additionally, the settlement agreement includes a provision that would make billboards a prohibited use in all zoning districts subject to strict performance standards, as well as a permit requirement for major maintenance, restoration, improvement or replacement work. No new billboards would be allowed in the City and no existing billboards could be expanded without an approved variance pursuant to City Code Section 21.504 (c)(2). This is consistent with the land use status of billboards in nearly all cities in Minnesota. The legal impact of this re-classification is to make existing billboards legally non-conforming uses, currently protected by Minn. Stat. §462.357, subd. 1e. Under state law this use may be repaired, restored, improved, maintained or replaced unless the use is discontinued for a period of more than one year or destroyed by fire or other peril to the extent of greater than 50 percent of its estimated market value, as indicated in the records of the county assessor at the time of damage, where no building permit is applied for within 180 days of when the property is damaged. The conformance triggers set out in City Code Section 21.504 are consistent with this state law. In any case, the City may, by ordinance, impose upon nonconformities, such as billboards, reasonable regulations to prevent and abate nuisances and to protect the public health, welfare, or safety. The Section 19.66 amendments are crafted to address those reasonable performance standards.

The negotiated settlement agreement received conceptual approval by the City Council at its September 21, 2009, Study Session. This matter is before you because in order to effectuate that settlement agreement it is necessary to amend the Bloomington City Code Chapter 19 as it relates to the land use status of billboards. The draft ordinance containing the proposed amendments to the City Code is attached.

ANALYSIS

There are currently five billboards in the City of Bloomington, as follows:

Address	Property Owner	Current Zoning
9321 East Bloomington Freeway	Bucks Unpainted Furniture Attn: Roger J. Buck 9231 East Bloomington Freeway Bloomington, MN 55420	I-3
5000 West 78 th Street	California Closets T.C.C.C., Inc. Attn: Thomas R. Sweeny, President 5000 West 78 th Street Bloomington , MN 555435	CS-0.5
1301 American Blvd. West	1301 Partners Attn: Roger Lindeman, President 6934 Edge Brook Place Eden Prairie, MN 55346	I-3
405 East 78 th Street	Gil Williams, President 405 East 78 th Street Bloomington, MN 55420	FD-2
9600 Aldrich Avenue	Corridor MN Building, LLC Steven L. Cummings, Secretary /Treasurer 755 E. Mulberry Ave., Suite 600 San Antonio, TX 78212	I-3

Billboards, were up until recently, one of the few remaining land uses classified by the City Code as temporary that had not yet had their use status converted to an interim use. As part of its comprehensive zoning ordinance update, the City has been converting the use status for uses classified by the City Code as temporary from temporary conditional uses to interim uses. Minnesota statutes do not specifically list “temporary conditional uses” and their status is unclear. Interim uses, however, are explicitly allowed by Minnesota’s zoning enabling legislation. On June 1, 2009, the Council approved amendments to the City Code pertaining to billboards that included:

- (1) No Interim Use Permit shall be granted for the continuance of a previously approved interim use on the same site unless the interim use has satisfied all previous conditions of approval and meets all Code requirements or receives appropriate variances;
- (2) Changing the use status of billboards from temporary conditional uses to interim uses; and
- (3) Changing the term for an Interim Use Permit from not to exceed three years, to a term not to exceed five years.

It is important to note that billboards presented a unique temporary or interim use by virtue of the fact that if the City had ever decided to deny a renewal or re-application of this use it would have had to pay just compensation for the value of the use to both the property owner and the billboard company pursuant to the Federal Highway Beautification Act and the Minnesota Outdoor Advertising Control Act. Moreover, the City had previously decided in 1994 to prohibit any new billboards within its limits. Other temporary or interim uses do not have such restrictions as to additional uses of the same type or any compensation requirements upon non-renewal or denial of a re-application.

The proposed ordinance would:

- 1) Prohibit billboards in all zoning districts, thereby making them legally non-conforming uses;
- 2) Clarify the rights and responsibilities of the owners to maintain, repair, replace, restore and improve the billboards in a manner consistent with Minn. Stat. §462.357, subd. 1e without illegal expansion of this use;
- 3) Require a sign permit, in addition to other required permits (electrical, building, lighting, etc.) for maintenance, restoration, improvement, replacement or repair work with a cost that is over 50% of the billboard's assessed market value so that planning staff can verify, prior to the owner's investment in the work, that the plans meet City Code requirements and do not constitute an illegal expansion of the use; and
- 4) Prohibit expansion of the individual billboards without an approved variance.

RECOMMENDATION

In Case 10000P-09, staff recommends approval of the proposed amendments to the City Code to modify billboard standards and use status.

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