

MINUTES

PLANNING COMMISSION MEETING

September 7, 2023
5:30 p.m.

City Hall Council Chambers
313 Court Street, The Dalles, Oregon 97058
Via Zoom / Livestream via City Website

PRESIDING: Cody Cornett, Chair

COMMISSIONERS PRESENT: Addie Case, John Grant, Philip Mascher, Maria Pena, Mark Poppoff, Nik Portela

COMMISSIONERS ABSENT: None

STAFF PRESENT: Director Joshua Chandler, City Attorney Jonathan Kara, Special Counsel Chris Crean, Secretary Paula Webb

CALL TO ORDER

The meeting was called to order by Chair Cornett at 5:31 p.m.

PLEDGE OF ALLEGIANCE

Chair Cornett led the Pledge of Allegiance.

APPROVAL OF AGENDA

It was moved by Portela and seconded by Poppoff to approve the agenda as submitted. The motion carried 7/0; Case, Cornett, Grant, Mascher, Pena, Poppoff and Portela voting in favor, none opposed.

APPROVAL OF MINUTES

It was moved by Poppoff and seconded by Case to approve the minutes of August 3, 2023 as submitted. The motion carried 7/0; Case, Cornett, Grant, Mascher, Pena, Poppoff and Portela voting in favor, none opposed.

It was moved by Pena and seconded by Portela to approve the minutes of August 17, 2023 as submitted. The motion carried 7/0; Case, Cornett, Grant, Mascher, Pena, Poppoff and Portela voting in favor, none opposed.

PUBLIC COMMENT

Warren Sawyer, 500 E. 3rd Street, The Dalles

Mr. Sawyer paraphrased his concerns with future development of Basalt Commons, Attachment 1.

QUASI-JUDICIAL PUBLIC HEARING

APL 033-23, J.R. Zukin Corp. d/b/a Meadow Outdoor Advertising, 747 W. 2nd Street, 1N 13E 4 AA tax lot 200

Request: Appeal of the ministerial denial on February 27, 2023 of Sign Permit 2589-23, Meadow Outdoor Advertising, to replace an existing 8'x 16' billboard with a new, larger 8'x 24' billboard in a similar location.

Chair Cornett read the rules of a public hearing. He then asked if any Commissioner had ex parte contact, conflict of interest, or bias which would prevent an impartial decision. Hearing none, he opened the public hearing at 5:44 p.m.

Director Chandler provided the staff report and presentation, Attachment 2. He noted the property address was incorrectly cited in the staff report on pages 1, 3 and 7. The correct address is 747 W. 2nd Street.

Director Chandler referred to additional material submitted via email or on the dais:

- Memorandum from Dunn Carney, received via email September 5, 2023, Attachment 3
- Memorandum of Law from City Attorney Kara, on dais September 7, 2023, Attachment 4
- Memorandum from Director Chandler, on dais September 7, 2023, Attachment 5

Chair Cornett asked if any decision in the history of the department used specifically the linear measurement.

Director Chandler explained the Department's actions after receipt of the memorandum from Appellant's counsel claiming that linear/road mile was historically used in The Dalles. Staff used ArcGIS to determine each address within 100 ft. of a billboard within the City of The Dalles. Each individual property file was searched (approximately 200 properties). The Notice of Appeal said there are 42 billboards owned and operated by Meadow Outdoor. Staff searched all property files and digital files from 2016, 20 permits were found. Two were duplicates, three were for maintenance and repair and did not require a permit. Of the 15 remaining permits, four referenced linear distance on the permit. Eleven had no mention of linear distance or the distance to another billboard.

Commissioner Grant asked if there was any reference to radius in The Dalles Municipal Code (TDMC or Code). Chandler replied the Code ultimately looks at the measurement section of the Code, which measures distance horizontally.

Commissioner Grant then asked if the Code was open to interpretation. Director Chandler replied when reviewing the Code, you often have to consider more than one section. Staff

concluded a radial measurement should be used; there is no mention it should be measured by the road. The Code states specifically that measurements should not be taken on topography.

Commissioner Grant asked if the application met any criteria. Chandler replied the staff report contained 24 findings. All but four findings met criteria.

Special Counsel Crean clarified. In the Code, Chapter 6.070 provides a number of provisions that apply across the entire development code. Article 10.6.070.030 says when the development code refers to distances, "Distances are measured horizontally." No matter where in the Code a distance is referenced, it is measured horizontally because of this provision. This provision results in a radial measurement.

Commissioner Mascher asked if this discussion was only about changing the size of the sign. Director Chandler replied that was correct. Any structural change must go through a new sign permit process and meet current standards.

Commissioner Mascher stated the Code clearly references the progression of a street, whether horizontal or not. He added it was odd to use two different means of measuring.

Attorney Kara replied no more than five on one side of the street refers to position, not distance. In the context of the Code, there is no ambiguity; it resolves the intent. If in one area we use one standard, we are not held to that same standard in other areas.

Commissioner Mascher stated a radius is not a distance, it is an area. If we measure billboards in a radius, we are not measuring distance, we are measuring an area.

Attorney Kara replied a radius is a measurement of distance. If measuring from a center point, all points are equidistant from the center, one mile away. It is as precise as it gets in all directions.

Commissioner Mascher stated he would agree to disagree on that point.

Special Counsel Crean said it is a distance because it is one-half of a diameter. Commissioner Portela added that because the diagram itself uses a circle it could be confusing to the eye.

Chris Zukin, 5525 Cherry Heights Road, The Dalles

Mr. Zukin is the General Manager of Meadow Outdoor Advertising, a family business in The Dalles since 1981. He provided three illustrations, Attachment 6.

Mr. Zukin stated the linear interpretation has been in effect since 1974. When the Sign Code was reviewed in 1981, 1982 and 2007, the interpretation was not changed. If the radial interpretation is applied throughout the City, every billboard owned by Meadow Outdoor will be nonconforming. None of the billboards could be relocated or reconstructed for safety or aesthetic reasons. Theoretically, in 30 to 40 years of this interpretation being in place, the billboards we own in The Dalles could go away. Obviously, this is a hardship for our business.

Mr. Zukin asked the Planning Commission to overturn this denial based on that erroneous interpretation. He also asked the Commission to work with City Council to approve a code amendment that would insert the word "linear" into the Code to reduce future confusion.

Chair Cornett asked if linear mile was the same as road mile. Mr. Zukin replied, sure.

Chair Cornett noted the deadline for an appeal had passed, and asked why it was delayed. Mr. Zukin replied he and Mr. Lehman were unavailable on the meeting days, so asked to push the meetings out. He added that Mr. Lehman was responsible for submitting the application and requesting an appeal.

Chair Cornett referred to Mr. Zukin's request that the Planning Commission and City Council amend the Code to improve clarity and include "linear mile." Chair Cornett stated the Planning Department offered the opportunity to work with Mr. Zukin before tonight's meeting. Why was that opportunity not taken?

Mr. Zukin replied Director Chandler said it was his strong opinion this was the right interpretation. Mr. Zukin did not see a chance to change Director Chandler's mind. Zukin added he met with both Director Chandler and City Manager Klebes regarding this issue and received no forward movement. Mr. Zukin did not see how working together on a new sign code was going to make any progress.

Chair Cornett addressed Mr. Zukin to confirm he knew any new Sign Code would come to the Planning Commission. While the Commission considers Staff recommendations, the Commission makes our own decisions. "Did you not see that as a possibility or an efficient road?"

Mr. Zukin replied he was on the 2007 sign committee; it took nine months to complete. He felt it was not worth the effort when it would result in no improvement. It was easier to come before the Commission.

Commissioner Mascher asked if Mr. Zukin saw the map demonstrating if the road mile were applied, it would result in 150 signs. Mascher asked if Mr. Zukin had comments on the map.

Mr. Zukin replied he had seen the map. To reach the reality you would have to overlay the map with zoning, property ownership, and other things. The reality is probably about 42 billboards in The Dalles; there could not be 100 billboards in The Dalles.

Dan Durow, 1628 W. 13th Street, The Dalles

Mr. Durow said he was asked by the Applicant to review the staff report and other materials, and to make comment. Mr. Durow was the Community Development Director from 1990 to 2012, and participated in many sign code revisions. When you finish the subject sentence it says, "...measured at right angles to the street centerline to which the sign is oriented." This sentence must be read in total. Those parts do not add up to a radial measurement. This was not the intent or the interpretation during my tenure with the City. When balancing the needs of the traveling public and businesses, and aesthetics of the signs, it becomes a policy decision. Planning Commission and City Council may change the decision, but it should not be an Administrative decision.

Mr. Durow drew an illustration to explain the method for taking measurements on a slope. That illustration will be available at a later date. His written comment is Attachment 7.

Chair Cornett stated the discussion was not about sign height or setbacks, but how the number of signs within a mile are measured.

Mr. Durow replied this was never discussed as an area measurement. It was always discussed and interpreted as a linear measurement.

Scott Hege, 6580 Martin Road, The Dalles

Mr. Hege referred to Mr. Durow's statement that said the interpretation from 1972 through today has been the same interpretation. Now there is a new interpretation. Each permit they applied for was approved by the Planning Department up until today when the interpretation changed.

My role as the former Director of the Port of The Dalles was to bring businesses here and help existing businesses to stay and expand. That is done by providing a supportive climate. This interpretation is not supportive. The City needs jobs and a tax base.

Mr. Hege continued, not all of the signs are a revenue source for only Meadow Outdoor Advertising. They are a source for businesses to generate revenue. Many other users include non-profit groups, Public Health, and the Oregon Department of Transportation (ODOT). Changes to the Code should result from the work of the Planning Commission and City Council. One person should not change the interpretation to obliterate all of the signs in our community.

Chair Cornett noted no signs would be obliterated in response to this hearing. Signs will continue to remain in existence until they are changed. Mr. Hege replied the signs will disappear over time if this interpretation is upheld.

John Lehman, 92464 Biggs-Rufus Hwy, Rufus, Oregon

Mr. Lehman stated this would have a huge negative impact on Meadow, the businesses and the community. Born and raised in The Dalles, Mr. Lehman has worked for Meadow since 1991. During his time with Meadow, it has always been a requirement to show there are no more than eight billboards in one linear mile section of the highway or street. It was never measured as a radius.

Mr. Lehman created numerous maps showing the one-mile inventory along the street or highway in order to secure billboard permits. Examples of the maps are included in the original appeal packet. The measurement of The Dalles Sign Code mirrors ODOT's code. Mr. Lehman created a master interstate line map inventory with the Planners. In the last 32 years, only nine new billboards were built.

Mr. Lehman asked the Planning Commission to instruct Staff to reverse incorrect interpretation of The Dalles Sign Code.

Chair Cornett asked if Meadow measured road miles reflective of ODOT's code. Mr. Lehman replied that was correct. The Sign Code is mirrored on ODOT's code. ODOT has a linear interpretation, measuring between mile markers.

Chair Cornett noted the Planning Commission's decision is based on The Dalles Municipal Code, not ODOT's code.

Mr. Lehman said if this interpretation stands, all of our signs will be nonconforming.

Ty Wyman, Counsel for the Appellant, Dunn Carney, 851 SW Sixth Ave., Suite 1500, Portland

Mr. Wyman thanked the Commission and Staff. This case is coming together in an odd way procedurally. The evidence is coming to you quite late. Mr. Wyman asked the Commission to accept additional evidence, either through a continued hearing or through an open record period.

Chair Cornett asked if Mr. Wyman was formally requesting an extension. Mr. Wyman replied he was requesting the record remain open for 14 days.

Special Counsel Crean noted ORS 197.797(6) states if someone requests the record held open, the Commission must do that. It can be held open for additional written evidence. The Commission would review that evidence, then at a future meeting deliberate and make a decision. The Commission does not have to take any new public testimony, just written evidence. Alternatively, the hearing can be continued for at least 7 or 14 days, and continue to accept written evidence as well as verbal testimony. If someone submits new evidence, everyone has the opportunity to respond, followed by another 7 days to review responses. After that, the record may be closed. The applicant will then have a final 7 days to submit any final written argument with no new evidence. This is the 7/7/7 rule. The Commission would then return and review everything submitted, deliberate and make a decision without any additional testimony. The record cannot be closed until the final argument is received.

Chair Cornett stated public testimony would continue at this meeting. After tonight, verbal testimony will be closed. The record will remain open for written testimony.

Jim Wilcox, 416 W. 7th Street, The Dalles

Mr. Wilcox stated the Planning Office has lost institutional memory. Not one person remains from 2006. New staff is making a different interpretation. The Code has not changed since 1992. The Code for sandwich signs is over 11 pages long, the billboard Code is only two pages. The method of measurement is not referenced in the Sign Code.

Mr. Wilcox said if he read the Code, he would do exactly what Meadow is doing. Without background knowledge, he would reach this conclusion because nothing is referenced.

Mr. Wilcox strongly supports the appeal. The Commission needs to take the past into consideration.

Attorney Kara said he and Director Chandler were not here 30 years ago. They have only the Code in front of them. The thing that matters is the intent of City Council.

Mr. Wilcox asked if the research went back to 2006. Director Chandler replied Staff found permits back to 1984. Of those, only four mentioned anything to do with distance.

Chair Cornett confirmed there were inconsistencies in the submittals and approvals. Director Chandler agreed; evidence is not available to show how the applications were approved.

Mr. Wilcox said what is on paper is not what was going on. The signs are there and they were permitted, period. Director Chandler replied of the 15 permits, four were approved by the Planning Department in the wrong zone. Two are in residential zones on E. 10th and Trevitt Streets, approved in 2012. In a residential zone, billboards are not allowed.

Mr. Wilcox stated there are inconsistencies throughout the Code.

Ryan Rupert, 1819 Cliff Street, The Dalles

Mr. Rupert stated state, federal and county highways are all measured by the mile markers. If your regulation says no more than eight per mile, why would you need to look at any other definition of mile? Mr. Rupert said this is the interpretation for all the entities Mr. Zukin works with. GIS does not work for this.

There were no comments in opposition.

Commissioner Mascher asked if Staff reviewed how this is handled in other counties or cities. Director Chandler replied Staff enforces The Dalles Municipal Code; there is no reason to consider methods in other jurisdictions.

Commissioner Mascher asked for the clearest language that references a radial mile. Attorney Kara replied the simplest language is found in TDMC 10.6.070.030(A)(2), "Measurements are shortest distance." The shortest distance between two points is a straight line.

Commissioner Grant asked if Staff had a map showing all the existing signs, and how many would be nonconforming to this rule if interpreted as a radius. Director Chandler replied no. Speaking to the points made about nonconforming, if a few signs were removed, many remaining billboards would be conforming.

Commissioner Grant then asked if there are multiple signs that are nonconforming based on this interpretation. Director Chandler replied yes. On the map shown earlier, 14 are around each other. We also have nonconforming signs because they are in the wrong zone. No matter how we measure it, multiple signs are nonconforming, some of which should not have been approved.

Commissioner Grant asked if a billboard exceeded its life expectancy and needed to be replaced for safety reasons. The radius limits our capacity in that area, correct?

Special Counsel Crean replied. The Code for nonconforming structures states, "If a nonconforming structure is damaged by any means, the structure may only be reconstructed..." This notion if the sign is damaged it cannot be repaired or replaced is not true. The Code specifically allows a nonconforming sign to be reconstructed, and goes on to say, "Ordinary maintenance and repair is permitted..." These signs can be maintained and reconstructed for a very long time. The notion they will all evaporate is not supported by the Code.

Attorney Kara said if there are issues with this interpretation, they need to be supported by substantial evidence. In my opinion, very little of what was heard tonight qualifies. If the Planning Commission would like to see something completely different from its Sign Code, that would be great direction to provide to Staff.

Commissioner Portela asked if the total number of signs were just the total, or the total of one entity. If the signs are not permitted by the City, why would we count them? Special Counsel Crean replied the answer is because the Code does not distinguish between them. The Code says the number of signs within a certain distance are counted. This provision is 50 years old and has never been revised. Many sections of the Sign Code need attention. The Community Development Department is planning to revise the Sign Code in upcoming months. If we limit the number of signs within a certain distance, we should distinguish between state, federal and local entities, or clarify that they all count.

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Special Counsel Crean reiterated a point regarding the structure of the Code. Several comments stated the provision to measure distance is not referenced in the Sign Code, therefore it does not apply. That simply is not the case. TDMC Article 6.070.010 expressly states, "This Article explains how measurements are made..." The entire article is dedicated to establishing how to measure different things for purposes of the development code. These measurements apply throughout the entire Code.

Commissioner Portela said it makes sense that ODOT uses mile markers. He asked if most jurisdictions operate under the definition of a radial mile.

City Attorney Kara stated best practices are going to be for Staff to examine what best practices are for future revisions to this Code. For now, it does not matter if a different jurisdiction has word for word what our Code says and ends up using a different measurement.

Commissioner Portela said the argument of ODOT versus a planning department would then be invalidated. ODOT functions off distance and, of course, would use a linear mile.

Chair Cornett clarified. When asking for the difference between the City's Code and ODOT's Code, Cornett was trying to illustrate the provision used by ODOT does not exist in our Code. How other people do things does not matter; we use TDMC only.

Chair Cornett added the decisions the Commission makes work within the microcosm of TDMC. The Commission does not consider how it will affect one single business, many businesses or businesses yet to come. It does not consider economic development or anything regarding The Dalles. It is not the Commission's place to decide what is best for a specific business or not, or the overall vitality of The Dalles. The Commission also focuses on historic decision making, which we have found to be inconsistent. Cornett added the Commission will continue working on the RV Code and the Sign Code as well. However, the Commission must be considerate and careful when making these decisions. The decision made on this issue, will have an effect on how we modify, amend, change or replace ordinances regarding billboards and signs in the future. Any revisions to the Code will not affect applications already submitted.

Chair Cornett responded to testimony given in favor of the application. Cornett stated, "It is our job to change ordinances, think about the ordinances, apply the ordinances for signs. That responsibility is ours."

Chair Cornett closed the public testimony, written testimony remains open. He then requested clarification of the timeline for submissions.

Special Counsel Crean stated any new evidence must be submitted to the Planning Department by close of business on Thursday, September 14, 2023. Any responsive evidence must be submitted by close of business on Thursday, September 21, 2023. The Applicant's final argument must be submitted by close of business on Thursday, September 28, 2023.

City Attorney Kara is unavailable October 5, 2023. Special Counsel Crean suggested the hearing continue October 19, 2023, and asked if that was acceptable to the Applicant.

The Applicant's counsel, Mr. Wyman, requested the record remain open for 14 days to allow deeper research into past practices. Chair Cornett agreed to the request.

Special Counsel Crean stated for the record, new evidence must be submitted by close of business Thursday, September 21, 2023. Responsive evidence must be submitted by close of business on Thursday, September 28, 2023. The Applicant's final argument must be submitted by close of business on Thursday, October 5, 2023.

Chair Cornett stated we would revisit the hearing October 19, 2023. He then asked if any participant request the public hearing be reopened on October 19 meeting. Counsel Crean replied the request could be made, but the Commission was not required to grant the request.

Chair Cornett closed the public hearing at 7:41 p.m. The written record will remain open until the dates identified.

There were no resolutions.

STAFF COMMENTS / PROJECT UPDATES

Director Chandler thanked everyone for attending.

Director Chandler introduced new Associate Planner, Frank Glover.

The meeting September 21, 2023 will include another application. Director Chandler requested everyone's attendance.

COMMISSIONER COMMENTS / QUESTIONS

Chair Cornett thanked all the Commissioners for attending, and said their input is invaluable. He added this was a good test for the Commission.

Chair Cornett added no one would be negative or upset, there is no negative feeling or emotion connected with this process. We do the job as best we can. We may disagree and that's okay. Please be honest with your direction.

Commissioners Pena and Grant are unable to attend on September 19, 2023.

Special Counsel Crean stated the Commission cannot talk about the hearing with anyone outside this meeting. He added the Commissioner's may talk as long as no more than three Commissioners are present for the discussion.

City Attorney Kara stated he would attempt to attend more often in person. He invited the Commissioners to contact him with questions.

ADJOURNMENT

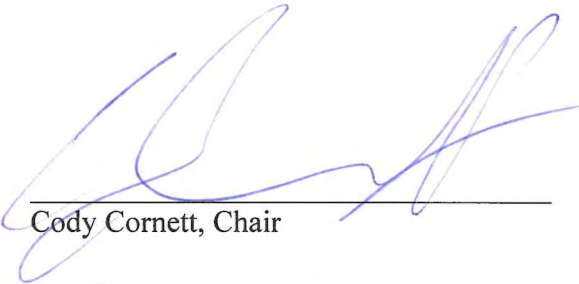
Chair Cornett adjourned the meeting at 7:49 p.m.

Continued on next page.

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Submitted by/
Paula Webb, Secretary
Community Development Department

SIGNED:



Cody Cornett, Chair

ATTEST:



Paula Webb, Secretary
Community Development Department

My name is Warren Sawyer, my wife and I own Sawyer Properties located at 500 E. 3rd St. in The Dalles. I'm here tonight to get information about the Basalt Commons development regarding the parking plan for the development and request answers to a few questions. As far as I know there has not been a formal site plan submitted. Right now, I feel there is a lack of information and communication regarding details of their parking plan from the developers and the city's planning department even though that information is available. My hope is that there will be ample opportunity for public input and that important decisions are made by people elected to represent the citizens of The Dalles rather than by city staff alone. To be clear I am not opposed to the development but am opposed to the development not being required to provide adequate off-street parking.

According to the code the minimum required parking for the development is "not less than 1 parking space for every dwelling unit" which equates to 108 spaces. The minimum requirement for the commercial ground floor of 9821 square feet averages between 3 and 7 spaces per 1000 square feet depending on the type of business. Using 4 spaces per 1000 square feet as an example, that would be an additional 39 spaces, and if they expanded the ground floor to two stories because of the additional 5 feet of height from the conditional use permit then the requirement would be 78. So, at a minimum the municipal code would require 147 off-street parking spaces. Developments such as this are exactly why the code was enacted in the first place, so there would be adequate parking to support residences, commercial activity, and customers. It's possible that the minimum number of off-street parking required by the code is less than what's actually needed if residences average more than 1 car per dwelling unit along with staff of the complex, employees of the commercial units, customers, and visitors of the residences. Other than their preliminary plan submitted over a year ago showing only 36 off-street parking spots, I do not have any idea how many dedicated off-street parking spots are in the current plan, and I do not think that is public knowledge. It would appear the planning department has decided to waive the minimum parking requirements and depend on the difference being made up with on-street public parking in the general vicinity of the development. I'm not sure there is even enough on-street in the general vicinity to satisfy the additional parking needed above their dedicated off-street parking and most of those on-street parking spots are in a Prohibited Parking District. My perception is that there is not and will result in competition between existing businesses, customers, and residents to find any place to park at all reasonably close to where they work, shop, or live. There is a municipal code that states the Minimum and Maximum Off-Street Parking Requirements "May Be" Waived for developments within CBC-2 zone of the Central Business Commercial District. It does not state that the parking requirements are waived, must be waived or are exempt. From my understanding this is possibly a staff decision so I'm not sure it has to be approved by the planning commission, which if so, is just plain wrong and I think the code is not being used as it was intended for small footprint developments in the downtown core area where on-street public parking would work rather than required off-street parking. To make generalized comparisons of potential vehicle ownership of the apartment residences between The Dalles and large metro areas where people work, live and do business in a more confined area and depend on public transportation for travel outside of their primary area seems presumptive and inappropriate as the two areas are much different in population density.

1. How many off-street parking spots are being required and how many are being proposed?
2. Is it only a staff decision to approve waiving the minimum/maximum off-street parking requirements or is it a decision for the planning commission to vote on?
3. Will property owners and businesses affected by the development be notified of a planning commission meeting regarding site plan approval and have time for public comment?
4. Is city planning and the development counting on-street parking to satisfy the parking needs? These are public parking and should not be counted at all.
5. Most of the downtown area is in a Prohibited Parking District for on-street parking including most of the area surrounding the development. Will Municipal Code 6.08.020 attached be enforced?
6. Where are people going to park that does not create an undue hardship on existing businesses, customers and residents?

The Dalles, Oregon Municipal Code

Title 6 TRAFFIC

Chapter 6.08 DOWNTOWN PARKING DISTRICT

6.08.020 Prohibited Parking.

A. No person shall park a motor vehicle upon the public streets in the downtown parking district described in Section 6.08.010 while said person is at their place of employment, business profession, or residence, when said placement of employment, business profession, or residence is located within the Central Business Zone Boundary as shown on Exhibit A, between the hours of 9:00 a.m. and 6:00 p.m. except as provided in Section 6.08.030.

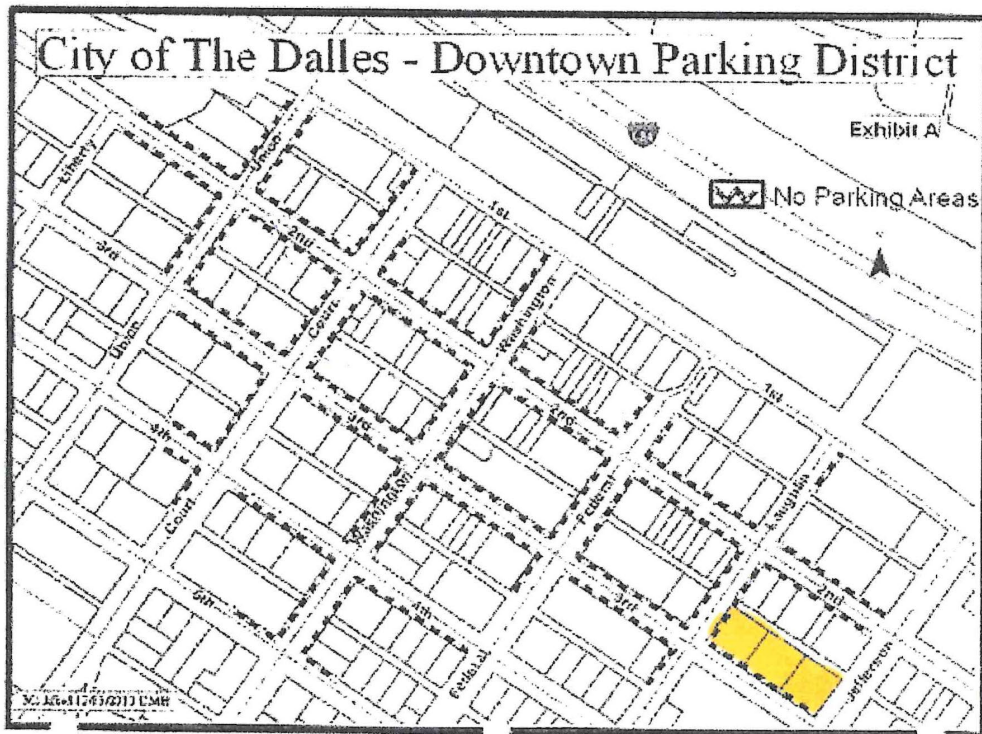


Exhibit A

For purposes of this section, the term "employment" shall include being engaged for wages, credit or other remuneration or as a volunteer for a public or private enterprise.



City of The Dalles Planning Commission

THURSDAY, SEPTEMBER 7, 2023 | 5:30 PM

1

Appeal No. 033-23
of Sign Permit No. 2589-23

Appellant: J. R. Zukin Corp. d/b/a Meadow Outdoor Advertising

Address: 747 W. 2nd Street

Assessor's Map and Tax Lot: 1N 13E 4 AA 200

Zoning District: General Commercial "CG"

2

Additional Material

- 9/5/23 – Memorandum: Dunn Carney LLP, Appellant’s Counsel
- 9/7/23 – Memorandum: Jonathan Kara, City Attorney
- 9/7/23 – Memorandum: Joshua Chandler, CDD Director

3

Subject Property

747 W. 2nd Street
1N 13E 4 AA 200



4

Subject Billboard

Dimensions:

Face = 8' x 16'

Height = 24'

Current advertisement removed for the purposes of this presentation.



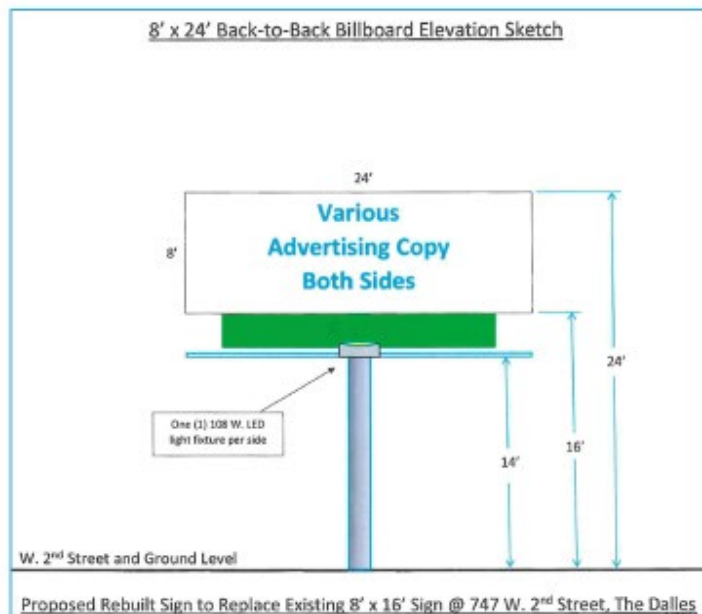
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Proposal

Dimensions:

Face = 8' x 24'

Height = 24'



6

Project Timeline

Sign Permit No. 2589-23:

- Submitted: February 16, 2023
- Denied: February 27, 2023

Appeal No. 033-23

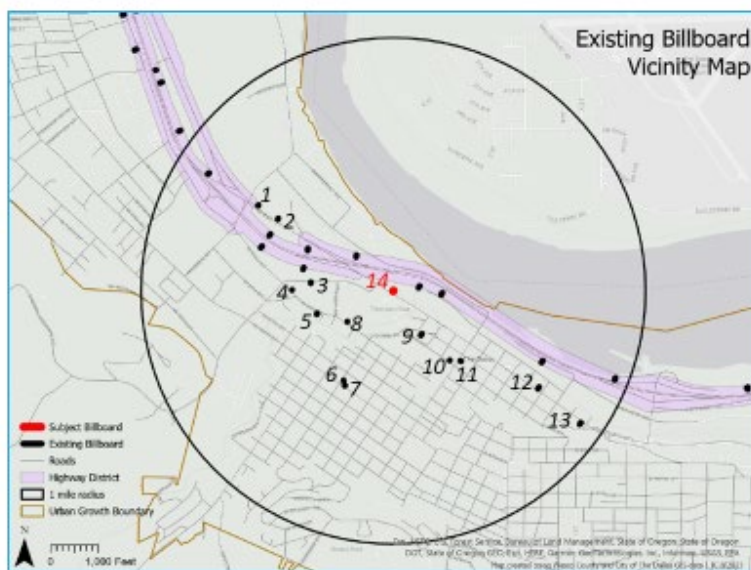
- Appeal Filed: July 7, 2023
- Appeal Deemed Complete: August 4, 2023
- Notice of Appeal sent: August 24, 2023
- *Planning Commission hearing: September 7, 2023*

7

Basis for Denial

Within one-mile radius:

- 24 billboards (total)
- 14 non-Highway billboards



8

Interpretation at Issue

TDMC 10.13.050.150 (C)(2)

City Streets. The maximum number of advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street and no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented.

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Interpretation at Issue

TDMC 10.13.050.150 (C)(2)

City Streets. The maximum number of advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street and no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented.

Radial Mile – City’s Interpretation

Road or Linear Mile – Appellant’s Interpretation

10

Interpretation at Issue

- Same language since at least 1974
 - Later amendments distinguished between City Streets and Highways
- In 1992, Appellant requested the addition of “road mile” into Sign Ordinance
- Upon adoption, “road mile” was not added into Sign Ordinance
- Existing language has been unchanged since 1992

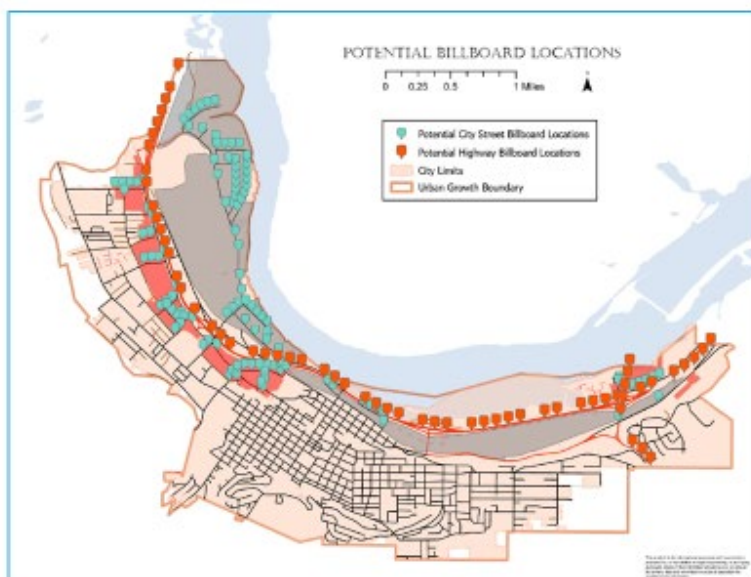
11

Road/Linear Mile

Staff generated map to demonstrate:

No more than 8 signs per linear mile on all roadways in UGB

Only signs in CG and I zones permitted; billboards are not permitted in all other zones



12

Filing Appeal

- Staff corresponded with Appellant multiple times (10/22 – 6/23) to discuss potential appeal
- Multiple procedural inconsistencies within TDMC 10.13 and 10.3
 - *Any person aggrieved by a determination of the Director may appeal to the Planning Commission...* (10.13.070.060(D))
 - *The approval or denial of a ministerial action shall be the City's final decision.* (10.3.020.030(D))
 - **No mechanism to appeal denied sign permit aside from action in Wasco County Circuit Court**

13

Filing Appeal

- Oregon Land Use: Appeals are to be submitted within a reasonable time from date of denial
- TDMC: Administrative and Quasi-Judicial decisions – required to submit Notice of Appeal within 10 days from denial
 - SP 2589-23 denied on February 27, 2023
 - **18+ weeks from Notice of Appeal submittal**

14

Filing Appeal

- Staff considered TDMC inconsistencies for filing an appeal
- Decided to err on side most beneficial to Appellant; allow Appeal to move forward
- Offered concession (Attachment 5) with goal of amending the inconsistencies of Chapter 10.13
 1. Move forward with Appeal
 2. Collaborate with Staff on amending inconsistencies with Chapter 10.13
- Appellant provided no response; submitted Notice of Appeal

15

Review Criteria

- Criterion met
- Criterion not met
 - *Finding #19 - 10.13.050.150(B)*
 - *Finding #20 A, B, C - 10.13.050.150(C)(2)*

An application may not be approved if criteria are not met

16

Finding #19 (10.13.050.150 (B))

Outdoor advertising signs shall have metal primary structural members.

Structural information not included on application

Criterion not met

17

TDMC 10.13.050.150 (C)(2)

City Streets. The maximum number of advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street and no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented. Sign area shall not exceed 288 square feet, with maximum dimensions of 12 feet vertical and 24 feet horizontal.

18

Finding #20 A, B, C

City Streets. The maximum number of advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street and no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented. Sign area shall not exceed 288 square feet, with maximum dimensions of 12 feet vertical and 24 feet horizontal.

19

Finding #21

City Streets. The maximum number of advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street and no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented. Sign area shall not exceed 288 square feet, with maximum dimensions of 12 feet vertical and 24 feet horizontal.

Criterion met – No further discussion.

20

Finding #20

City Streets. The maximum number of advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street and no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented.

Three requirements for sign placement:

- 1. shall not exceed 8 per mile**
- 2. no more than 5 on one side of the street**
- 3. no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented**

21

Finding #20 A: Requirement #1

*City Streets. The maximum number of advertising signs **shall not exceed 8 per mile** with no more than 5 on one side of the street and no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented.*

22

Measuring Distance (10.6.070.030 (A)(1))

Distances are measured horizontally. When determining distances for setbacks and structure dimensions, all distances are measured along a horizontal plane from the appropriate property line, edge of building, structure, storage area, parking area, or other object. These distances are not measured by following the topography of the land.



23

Measuring Distance (10.6.070.030 (A)(1))

Distances are measured horizontally. When determining distances for setbacks and structure dimensions, all distances are measured along a horizontal plane from the appropriate property line, edge of building, structure, storage area, parking area, or other object. These distances are not measured by following the topography of the land.

24

Geographic Information Systems (GIS)

- City uses ESRI GIS software; administered by Wasco County
- Widely used computer aided system
- Allows for pinpoint accuracy
- Without GIS, measuring distances are unreliable, inaccurate, and prone to human error

25

GIS Buffer Tool

Geoprocessing tool that creates buffer polygons around input features to a specified distance

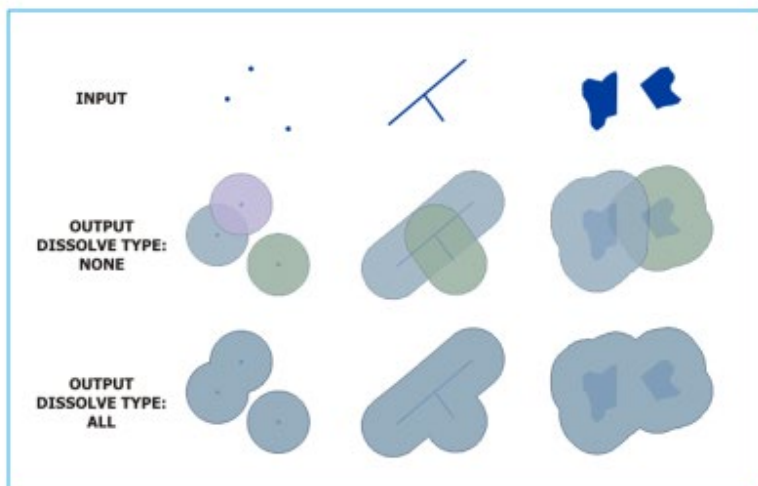
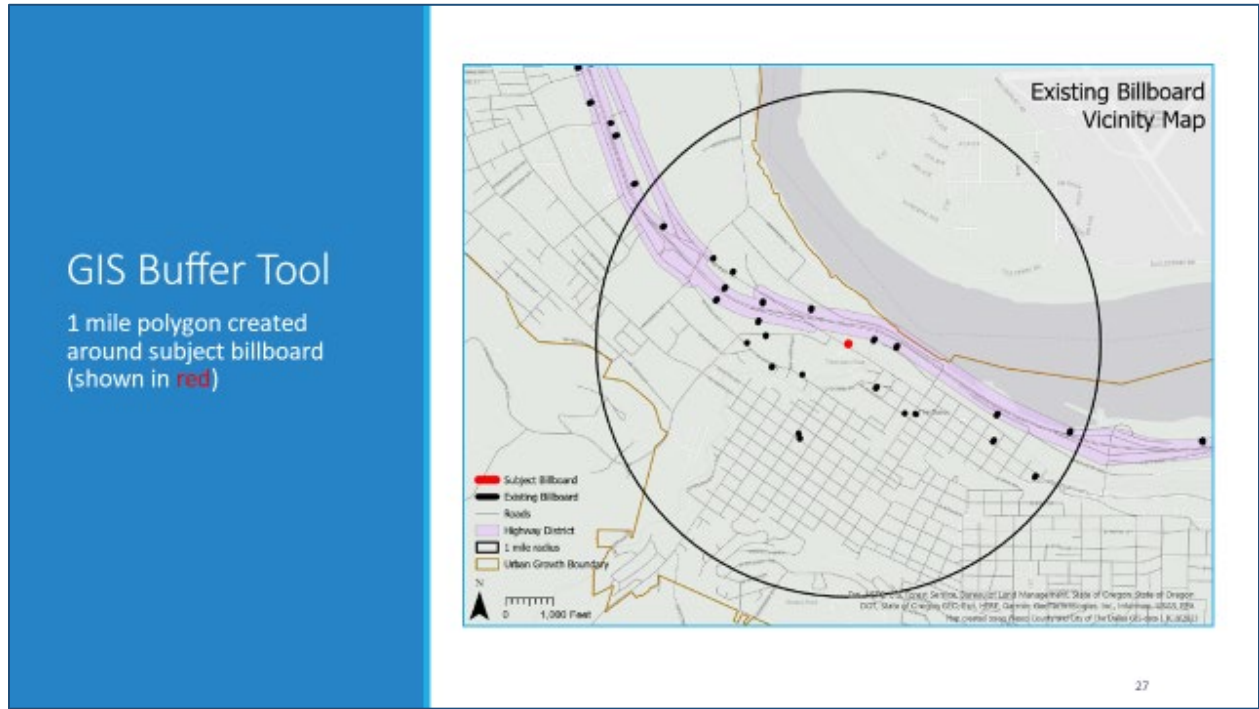


Image provided by ESRI

26



Measuring Distance (10.6.070.030 (A)(1))

Distances are measured horizontally. When determining distances for setbacks and structure dimensions, all distances are measured along a horizontal plane from the appropriate property line, edge of building, structure, storage area, parking area, or other object. These distances are not measured by following the topography of the land.

The diagram shows a simple line drawing of a house with a chimney. To the left of the house is a horizontal line representing a street, labeled "STREET". Two vertical dashed lines extend upwards from the street line to the top of the house. Two horizontal arrows point from the street line to the vertical dashed lines, indicating the horizontal distance from the street to the building. Below the diagram, the text reads: "Distances are always measured horizontally."

28

Topography

- Not specifically defined in TDMC
- Three common definitions provided below:
 - *The arrangement of the natural and **artificial** physical features of an area.*
 - *The art or practice of graphic delineation in detail usually on maps or charts of natural and **man-made** features of a place or region especially in a way to show their relative positions and elevations.*
 - *Topography is a field of geoscience and planetary science and is concerned with local detail in general, including not only relief, but also natural, **artificial**, and cultural features such as **roads**, land boundaries, and buildings.*
- Include “man-made” and “artificial features” (e.g. roads)
- **Roadways and streets are not factors in determining distance, thus “Road/Linear mile” interpretation is incorrect**

29

Finding #20 B: Requirement #2

*City Streets. The maximum number of advertising signs shall not exceed 8 per mile **with no more than 5 on one side of the street** and no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented.*

30

Finding #20 C: Requirement #3

City Streets. The maximum number of advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street and no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented.

31

Commission Alternatives

- 1. Staff recommendation:** Move to adopt Resolution No. PC 618A-23, a resolution denying the Appeal and affirming Staff's denial of Sign Permit No. 2589-23, based upon the findings of fact and conclusions of law set forth in the Agenda Staff Report.
2. Make modifications to then move to adopt an amended Resolution No. PC 601A-23, a resolution denying the Appeal and affirming Staff's denial of Sign Permit No. 2589-23, based upon the findings of fact and conclusions of law set forth in the Agenda Staff Report.
3. Move to direct Staff to adopt Resolution No. PC 618B-23, a resolution granting the appeal and overturning Staff's decision. Under this alternative, the Planning Commission is required to identify the specific criteria supporting its decision against Staff's Recommendation.


32

Next Steps

Staff intends on beginning a comprehensive review of the City's regulatory system/process for signs



33



Questions?

THURSDAY, SEPTEMBER 7, 2023 | 5:30 PM

34



Memorandum

To: The Dalles Planning Commission **Date:** September 5, 2023
From: Ty Wyman **File No:** JRZ1.1
Subject: City of The Dalles Appeal No. 033-23

The City has since at least 1974 limited placement of billboards to "8 per mile with no more than 5 on one side of the street . . ." TDMC 10.13.050.150(C)(2) now sets forth that limitation. In 2004, upon approval of the City's planning staff (Ex. 1 hereto), Meadow Advertising placed a billboard at 747 W. 2nd St. No fewer than nine such signs sat within a 1-mile radius of that sign, while just three sat within a one lineal mile thereof.

Meadow applied earlier this year to replace the subject sign. The referenced appeal stems from planning staff's denial of that approval, a decision that would change the prior interpretation of TDMC 10.13.050.150(C)(2), to limit placement of billboards to 8 per radial mile (as opposed to the prior interpretation of 8 per lineal mile). On referral from Kristen Campbell, Meadow asked Dunn Carney to evaluate staff's decision. As explained below, we have undertaken significant investigation of the City's land use regulations and records. Analyzing that investigation, I find no support for staff's decision.

Background Law. In discerning the meaning of a land use regulation, Oregon law directs each city and county to consider the text and context thereof. If the code text reveals the meaning, then the inquiry ends there. If, however, that text is ambiguous, then the municipality must look to the context of how the regulation was adopted and has been applied. *See, e.g., Estroff v. City of Dundee*, 79 Or LUBA 189 (2019).

Below, I analyze the text and context of TDMC 10.13.050.150(C)(2). I find the text unambiguous in applying the 8-sign limitation to a one-dimensional lineal mile of roadway, not to a two-dimensional radial mile. I then find the context of TDMC 10.13.050.150(C)(2) to evidence clearly this intent, to measure the limitation by lineal mile.

Analysis of the text of TDMC 10.13.050.150(C)(2). The cited regulation reads as follows:

The maximum number of advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street and no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented.

I am immediately struck by the fact that the "8 per mile" limitation is not stated in a vacuum. Rather, it is stated with direct reference to "the street" and "the street centerline." A street being linear, these references clarify application of the "8 per mile" limitation to a lineal mile of roadway. As such:

1. Staff's change in interpretation of TDMC 10.13.050.150(C)(2) is inconsistent with the text thereof; and

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1357
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The Dalles Planning Commission
September 5, 2023
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2. The Commission can find that that text (when considered alone, without consideration of any context in which that regulation was adopted or has been applied) supports a reading that the limitation to 8 signs applies per lineal mile.

The Commission may, thus, decide the matter on this basis alone and uphold Meadow's appeal. Should the Commission choose, however, to proceed with consideration of the context in which the City adopted and applied TDMC 10.13.050.150(C)(2), then I believe the same result would pertain. That context evidences clearly an intent to measure the limitation by lineal, rather than radial, mile.

Analysis of the context of TDMC 10.13.050.150(C)(2). Staff describes one contextual source that supports its interpretation that TDMC 10.13.050.150(C)(2) limits signs to 8 per radial mile. Specifically, it notes that, per TDMC 10.6.070.030, "distances are measured horizontally." Based on this reference, staff explains (at p. 8 of its Aug. 31 report to the Commission) its changed interpretation as follows:

For the purposes of determining billboard proximity (as required by TDMC 10.13.050.150(C)(2)), each proposed billboard location is considered the center point of a radial buffer determined horizontally in all directions equidistant from the center point (*i.e.*, a circle).

I disagree with staff's premise, that TDMC 10.6.070.030 is relevant context for applying TDMC 10.13.050.150(C)(2), as well as its above-quoted conclusion.

TDMC 10.6.070.030 reads as follows:

Distances are measured horizontally. When determining distances for setbacks and structure dimensions, all distances are measured along a horizontal plane from the appropriate property line, edge of building, structure, storage area, parking area, or other object. These distances are not measured by following the topography of the land. See Figure 6-1.

This text, alone, evidences that it does not apply to placement of billboards. Rather, by its terms, that provision applies only to measurement of setbacks and structural dimensions. Indeed, a graphic included under TDMC 10.6.070.030 bears out its limited application.



TDMC 10.6.070.030 goes on to explicitly state that "[t]hese distances are not measured by following the topography of the land." This further supports a conclusion that it does not



The Dalles Planning Commission
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Page 3

apply to placement of billboards, as all would agree that, whether measured in a radial or a lineal manner, the 8 per mile limitation may be measured only by topography.

But let's move on to contextual clues outside of the TMDC. Oregon law establishes the primary source of context for any land use regulation, *viz.*, the comprehensive plan. ORS 197.829.¹ Here, as described in the attached memorandum of Dunn Carney paralegal Jasmine Vasquez (Ex. 2 hereto), plan policies support a reading of TDMC 10.13.050.150(C)(2) as applying per lineal, rather than radial, mile.

Put generally, Jasmine's memo explains how the plan calls for the very kind of economic development that billboards support. Furthermore, I understand that the Commission can expect to take substantial testimony at hearing as to the positive effects that billboards have on the local economy.

Another source of context is the history of adoption of the regulation. On our research, the City first regulated billboard placement in 1974 by Ordinance No. 915 (Ex. 3 hereto), which established the existing rule - "The maximum number of advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street." The City later passed Ordinance 81-1011, containing the exact same language.

In the early 1990's, the Planning Commission considered its sign regulations. It ended up making no change, but the process demonstrates the intent to limit advertising signs to 8 per lineal mile of roadway. Specifically, minutes of the Sept 1, 1994 Planning Commission meeting reflect the following comment from Senior Planner Scott Keillor, "The Dalles allows 8 billboards per lineal mile of freeway." (Ex. 4 hereto.) Mr. Keillor worked then under Planning Director Dan Durow. Mr. Durow has confirmed that Mr. Keillor's comment reflected the Director's interpretation of the relevant code language. We expect him to testify as such to the commission.

A third contextual clue to the intended meaning of a land use regulation is the manner in which the City has previously applied it. Here, I understand that there is no disagreement that the City has for decades applied TDMC 10.13.050.150(C)(2) to limit billboards to 8 per lineal mile; staff simply considers that interpretation to have been wrong.

I recognize the Planning Director's authority to administer the code. However, fundamental fairness suggests that no one may recant a prior decision once someone has relied on it. The law recognizes such fairness through the principles of estoppel and collateral attack. The cases of *Ganson v. Lane County*, 2021 WL 1964624 Or LUBA (2021) and *Johnson v.*

¹ The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:

- (a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
- (b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
- (c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
- (d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements.



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Page 4

Landwatch Lane County, 327 Or. App. 485 (2023) have applied these principles to prohibit Oregon municipalities from recanting the legality of permits previously issued.

I find the referenced court decisions applicable to the present case. Quite simply, the City determined in 2003 that the subject sign complied with all regulations applicable to its placement, including TDMC 10.13.050.150(C)(2). As matters of both fairness and law, the City may not now overturn that determination.

Lastly, I urge the Commission to consider the implications of staff's changed interpretation of the billboard placement rules. As Meadow staff will explain at hearing, such decision would render every existing billboard nonconforming. A nonconforming use is by definition consigned to eventual oblivion by undermining Meadow's ability to remodel, rebuild, upgrade, modernize, or replace those signs.

I appreciate the opportunity to assist the Commission's consideration of the matter, and look forward to our hearing this Thursday.

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L# 98017 \$ ~~75~~

SIGN PERMIT APPLICATION
CITY OF THE DALLES

313 Court Street
 The Dalles, Oregon, 97058
 (541) 296-5481 x1125

INSTALLER INFORMATION

Name	SELF
Address	
Phone Number	
Current City Installer License	Yes/No

SIGN INFORMATION

Business Name	MEADOW OUTDOOR ADVERTISING 6
Address	P.O. BOX 331, THE DALLES, OR 97058
Telephone Number	(541) 296-9684
Text	VARIOUS
Sign Area	250' x 300'
Horizontal Dimension	24' 25'
Vertical Dimension	10.4' 12'
Type	Projecting - Hanging - Flush - (Pole) - Other
Illumination	Direct Indirect, UL No: <u>OF HOLD</u>

SITE ADDRESS
 747 W. 2ND ST.

PLEASE ATTACH A SCALED ELEVATION DRAWING OF YOUR PROPOSED SIGN COMPLETE WITH DIMENSIONS, LOCATION, AND COLOR SCHEME. YOUR ELEVATION DRAWING MUST INCLUDE A COMPLETE INVENTORY OF ALL SIGNS CURRENTLY AT YOUR LOCATION COMPLETE WITH DIMENSIONS AND LOCATIONS.

The purpose of a sign permit is to verify that the amount of signage requested does not exceed the amount of signage allowed. In order to do this, an inventory of existing signs is required. This includes signs for your business plus any other businesses that are at the same location. Signage is not based on the business, but on the building. Additionally, the ordinance makes distinctions based upon types of signage used. This is why the inventory must include information on sign type and location.

ELECTRICAL CONNECTION AND ALL SUPPLY CIRCUITS TO BE MADE BY LICENSED ELECTRICAL CONTRACTOR SUBJECT TO PROVISIONS OF THE STATE ELECTRICAL CODE.

SIGN INSTALLATION TO BE COMPLETED WITHIN 120 DAYS AFTER PERMIT HAS BEEN ISSUED.

Applicant's Signature and Date:	<i>John Lehman</i> 8-8-03
---------------------------------	---------------------------

Permit Number	03-326	Permit Fee	\$ 125.00
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Planning Information:	COPY VARIANTS PER ADVERTISING ENTRY.
-----------------------	--------------------------------------

Application Received By and Date:	CJB 08/08/03	Permit Issued By and Date:	CJB 08/08/03
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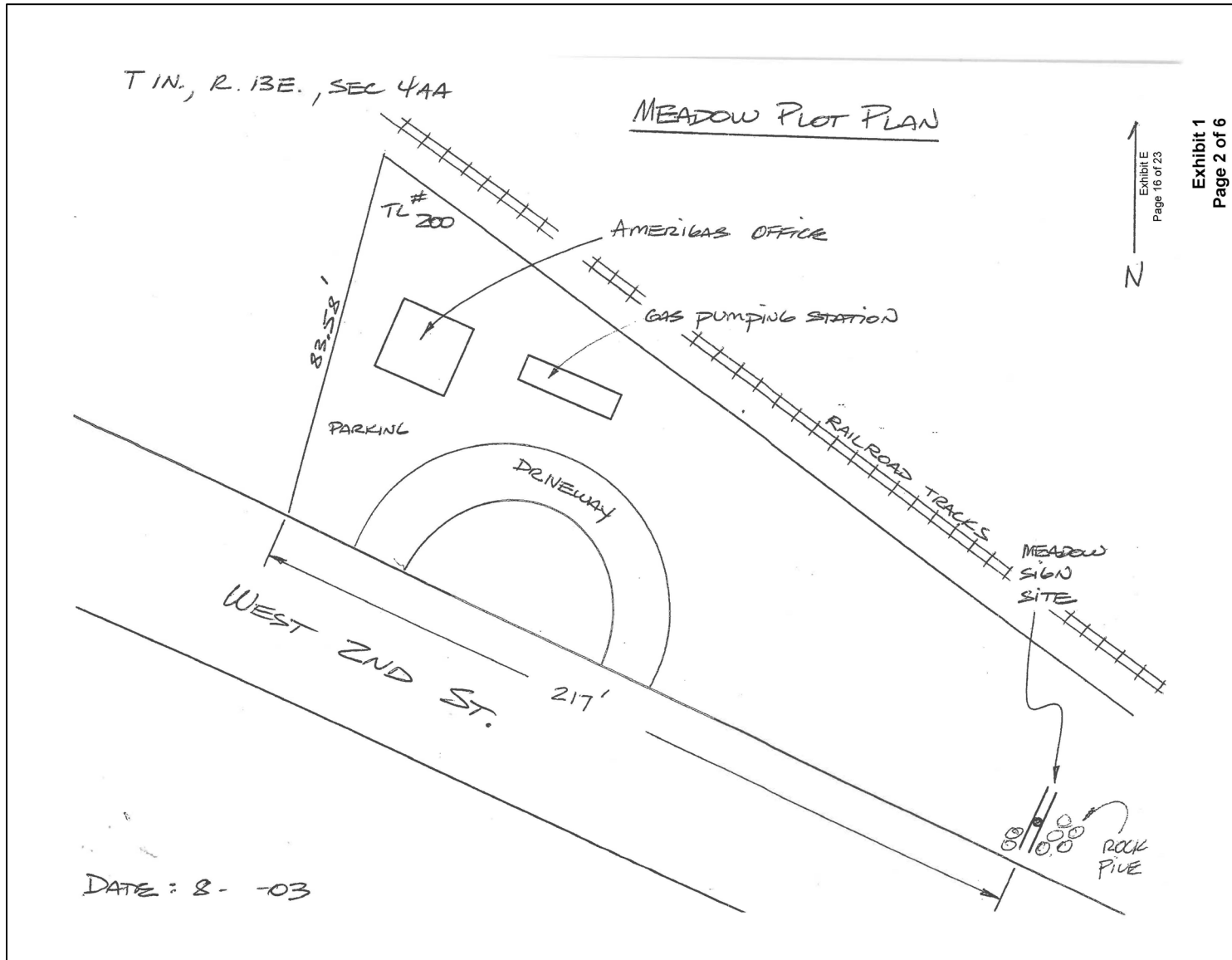
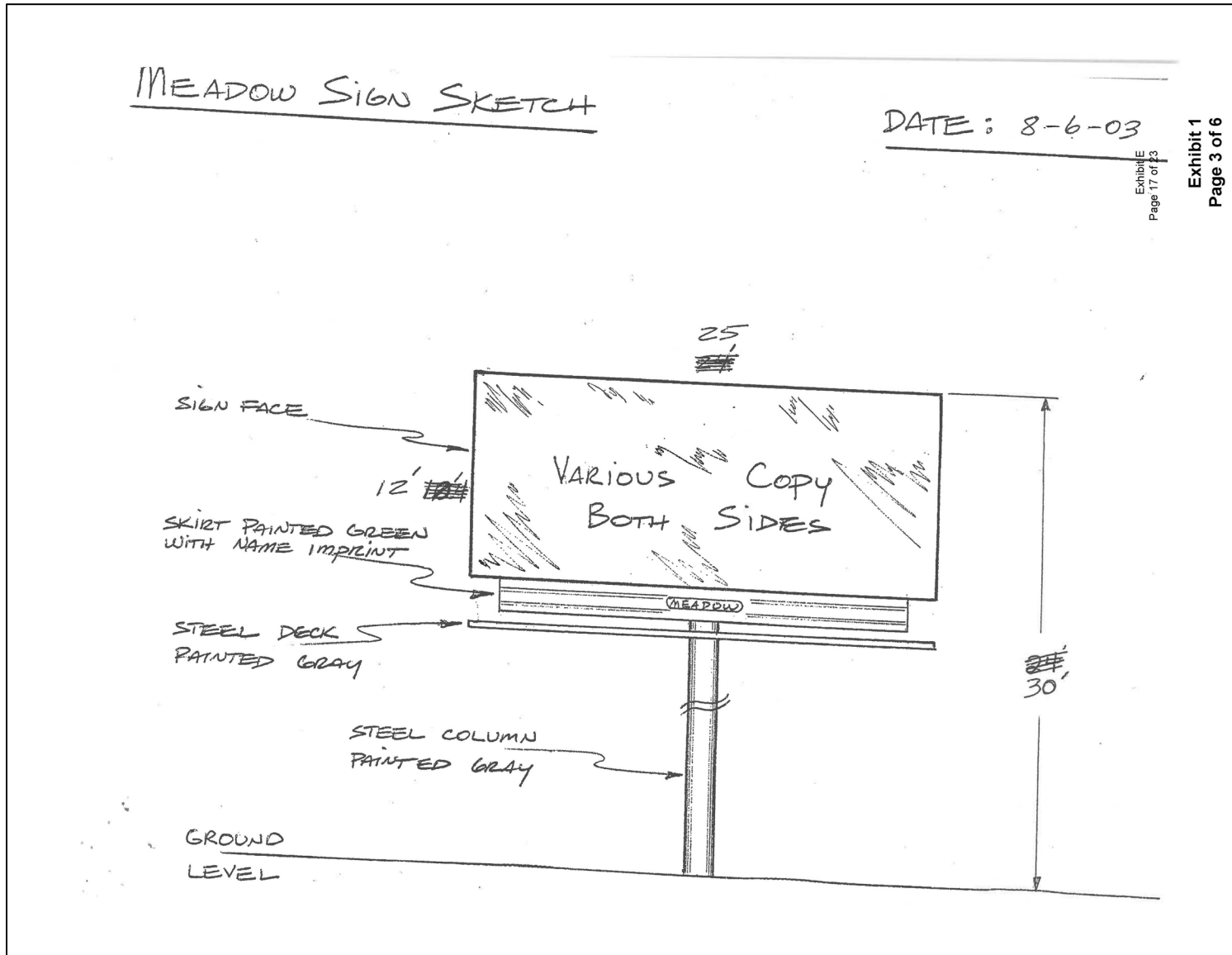
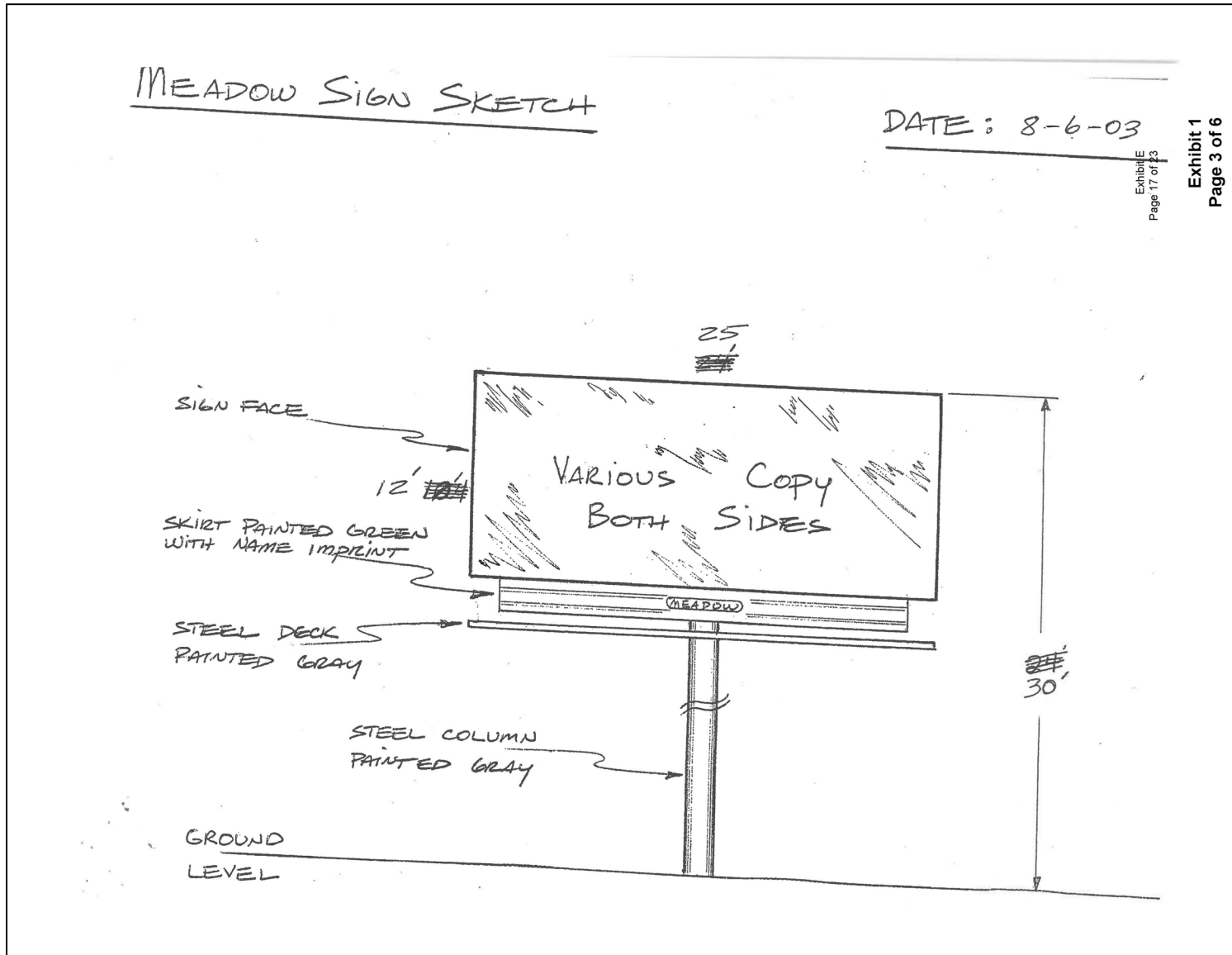



Exhibit 1
Page 2 of 6





L# 98017



SIGN PERMIT APPLICATION

OFF-PREMISE OUTDOOR ADVERTISING

DEPARTMENT OF TRANSPORTATION
 DRIVER AND MOTOR VEHICLE SERVICES
 BUSINESS REGULATION
 OUTDOOR ADVERTISING
 1905 LANA AVE. SE, SALEM OREGON 97314

SITE FIELD CHECK (TO BE COMPLETED BY DISTRICT MAINTENANCE OFFICE)				PERMIT OFFICE APPROVAL SECTION		
Proposed sign NO. 1 HWY: 292	PERMIT NUMBER: 177483	ENGINEER STATION: 2305+03	FULL CONTROL ACCESS: <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	APPROVED BY: [Signature]	PERMIT NUMBER: [Blank]	ISSUE DATE: 10/1/03
IS visible to: NO. 2 HWY: 002	PERMIT NUMBER: 24346	ENGINEER STATION: 2305+03	FULL CONTROL ACCESS: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	<input checked="" type="checkbox"/> SIGN CONFORMING		CONSTRUCTION DATE: 3/30/04
OWNER OF NEAREST SIGN (HWY NO. 1): Meadow	PERMIT NUMBER: 110239	DISTANCE TO PROPOSED SIGN: 871 FT		<input type="checkbox"/> NON-CONFORMING		REASON: [Blank]
OWNER OF NEAREST SIGN (HWY NO. 2): Meadow	PERMIT NUMBER: 0117116	DISTANCE TO PROPOSED SIGN: 520		OWNER CODE: M916	HIGHWAY CODE: D/A	DISTRICT: 9
AUTHORIZED OOD REPRESENTATIVE'S SIGNATURE: [Signature]	DATE CHECKED: 10/1/03	CANCELLATION DATE: [Blank]	WAS TAG RETURNED? <input type="checkbox"/> YES <input type="checkbox"/> NO			

** See all attachments re spacing*

SECTION 1 - PURPOSE OF APPLICATION

REPLACEMENT TAG - LOST TAG NO. _____
 RECONSTRUCTION OF PERMIT NO. _____
 DIRECTIONAL ** _____
 RELOCATION IN LIEU OF PERMIT NO. 11R020
 BUSINESS IDENTIFICATION* send new relo cre 9-20-23 with transfer # H0104
 BENCH BUS SHELTER

SECTION 2 - NAMES AND ADDRESSES

NAME OF PERMIT APPLICANT: MEADOW OUTDOOR ADVERTISING
 ADDRESS (NUMBER AND STREET): P.O. BOX 331 / 1127 BARLEWAY RD.
 CITY STATE AND ZIP CODE: THE DALLES, OR 97058
 NAME OF PROPERTY OWNER AT SIGN LOCATION: AMERIBAS PROPANE LP
 ADDRESS (NUMBER AND STREET): 747 W. 2ND ST.
 CITY STATE AND ZIP CODE: THE DALLES, OR 97058
 NAME OF PERSON OR COMPANY TO ERECT SIGN: MEADOW OUTDOOR ADVERTISING
 ADDRESS (NUMBER AND STREET): P.O. BOX 331 / 1127 BARLEWAY RD.
 CITY STATE AND ZIP CODE: THE DALLES, OR 97058

SECTION 3 - SKETCH OF SIGN

Sketch sign and include message.

NOTE: SIGN MUST NOT IMITATE OR RESEMBLE, IN STYLE OR COLOR, STATE HIGHWAY OFFICIAL SIGNS OR DEVICES

AD COPY
 BOTH
 SIDES

↓ FOR OFFICE USE ONLY ↓

SECTION 4 - SIGN FACTS

A SIGN DIMENSIONS

HEIGHT (FEET)	LENGTH (FEET)	AREA (SQ. FEET)	NUMBER AND SIZE OF SUPPORTS
128	25 1/2	600	ONE 24" PIPE

DISTANCE BETWEEN BOTTOM OF PANEL & GROUND: 12'

ADVERTISING IS ONE SIDE BOTH SIDES

B SIGN LOCATION

COUNTY: WASCOCO (33)

CITY (OR DISTANCE FROM NEAREST INTERSECTION): THE DALLES (33)

HIGHWAY ROUTE NUMBER OR NAME: HWY. 30 (W. 2ND ST.)

VISIBLE TO OTHER HIGHWAYS? YES NO
 IF "YES," WHICH? I-24

SIDE OF NO. 1 HIGHWAY: NORTH SOUTH EAST WEST

SIDE OF NO. 2 HIGHWAY: NORTH SOUTH EAST WEST

C COMPLETE THIS SECTION FOR BUSINESS IDENTIFICATION SIGNS

1. DISTANCE FROM PROPOSED SIGN TO BUSINESS ACTIVITY _____

2. IS BUSINESS ACTIVITY OR ON-PREMISE SIGNING VISIBLE FROM HIGHWAY? YES NO

D COMPLETE THIS SECTION FOR DIRECTIONAL SIGNS

1. SIZE OF COPY LETTERS: _____

2. COLOR OF BACKBOARD AND LETTERS: _____

3. SUBMIT WITH APPLICATION ADDITIONAL DOCUMENTS TO SHOW THAT THE BUSINESS IS REGIONALLY KNOWN. EXAMPLES: BROCHURES; PAGES FROM VISITOR'S LOG; FACTS ABOUT OR SAMPLES OF OUT-OF-STATE ADVERTISING PROGRAM.

PERMIT FEE: \$600.00

AUTHORIZED SIGNATURE: [Signature]

(Verifying application is complete and accurate)

Page 19 of 23

Exhibit 1
 Page 5 of 6

ZONE AFFIDAVIT					
INSTRUCTIONS: Complete sections A, B, and C, then contact the appropriate city or county zoning authority for verification of the zoning and completion of the sign compliance section.					
A	NAME OF PERMIT APPLICANT <i>MEADOW OUTDOOR ADVERTISING</i>				
	NUMBER AND STREET <i>P.O. BOX 331 / 1127 BARBECUEWAY</i>				
	CITY, STATE AND ZIP CODE <i>THE DALLES, OR 97058</i>				
B	NAME OF PROPERTY OWNER <i>AMERICAS PROPANE L.P.</i>				
	NUMBER AND STREET <i>747 W. 2ND STREET</i>				
	CITY, STATE AND ZIP CODE <i>THE DALLES, OR 97058</i>				
C SIGN LOCATION [REFER TO OTHER SIDE OF THIS APPLICATION]					
CITY (IF INSIDE CITY) <i>THE DALLES</i>		COUNTY <i>WASCO</i>	HIGHWAY ROUTE NUMBER OR NAME <i>HWY 30 (200)</i>	SIDE OF HIGHWAY <i>NORTH</i>	MILE POINT <i>17.49</i>
TAX LOT <i>200</i>	SECTION <i>4AA</i>	TOWNSHIP <i>1 N.</i>	RANGE <i>13E.</i>		
THIS SECTION TO BE COMPLETED BY CITY OR COUNTY ZONING AUTHORITY					
The above location is zoned: <input checked="" type="checkbox"/> COMMERCIAL <input type="checkbox"/> INDUSTRIAL <input type="checkbox"/> OTHER (Specify):					
DATE ZONING IS EFFECTIVE <i>1998</i>		ZONING AUTHORITY (NAME OF CITY OR COUNTY) <i>CITY OF THE DALLES</i>			
This will certify that the above described sign location is zoned as indicated above and said zoning was established as part of a comprehensive plan for the development of the overall area and not as spot or strip zoning devised primarily for the purpose of allowing outdoor advertising signs. Erroneous information and/or improper zoning procedures will result in permit being declared null and void, requiring removal of subject sign or signs.					
CHECK ONE BOX & SIGN BENEATH APPLICABLE STATEMENT					
<input checked="" type="checkbox"/> The above location and proposed sign complies with all applicable ordinances, plans, rules and other requirements of the city or county.					
SIGNATURE OF AUTHORIZED ZONING REPRESENTATIVE <i>X <u>OLLY BERNHARDT</u></i>		TITLE <i>SR. PLANNER</i>	TELEPHONE NUMBER <i>541-296-5481</i>	DATE <i>08/08/03</i>	
<input type="checkbox"/> The above location and/or proposed sign does not comply with all applicable ordinances, plans, rules and other requirements of the city or county.					
SIGNATURE OF AUTHORIZED ZONING REPRESENTATIVE <i>X</i>		TITLE	TELEPHONE NUMBER	DATE	
<input type="checkbox"/> Neither of the above statements apply. A letter of explanation is attached.					
SIGNATURE OF AUTHORIZED ZONING REPRESENTATIVE <i>X</i>		TITLE	TELEPHONE NUMBER	DATE Page 20 of 23	

Exhibit 1
Page 6 of 6



Memorandum

To: Ty Wyman
From: Jasmine Vasquez
Subject: Meadow Advertising - City of The Dalles Appeal No. 033-23

Date: September 5, 2023
File No: JRZ1.1

The City has since at least 1974 limited placement of billboards to "8 per mile with no more than 5 on one side of the street . . ." The referenced appeal stems from planning staff's decision to change the prior interpretation of TDMC 10.13.050.150(C)(2), to limit placement of billboards to 8 per radial mile (as opposed to the prior interpretation of 8 per lineal mile). Such limitation would render all of Meadow's signs nonconforming, thus destined to eventual removal. You asked me to evaluate the extent to which either of these interpretations would be more consistent with the express language, purpose, and underlying policy set forth in the City's Comprehensive Plan.

Comp Plan Goal 9 sets forth a broad purpose of economic opportunity and vitality. [cite] Notably, the plan highlights The Dalles' position as the hub of a five-county regional trade area, "the retail trade center for the Mid-Columbia Region."

The Dalles will maintain its long-time position as a regional retail trade center. Adequate commercial spaces, both undeveloped and redevelopable, should support anticipated growth. Tourism growth presents an opportunity to diversify the local economy. Facilities including the Gorge Discovery Center, Wasco County Museum, Riverfront Park and Trail, a wide variety of historic resources and properties, and abundant recreational opportunities provide the basis for this growth area.

Against this broad backdrop, Goal 9 specifies both Economic Development Goals and policies.

The first listed Economic Development Goal is to "[p]rovide family wage employment opportunities for The Dalles citizens." Policy 14 augments this goal as follows: "Encourage the start-up and growth of small to medium sized businesses providing family wage jobs. Develop reasonable standards to allow home business start-ups." The following evidence demonstrates that, as compared to staff's proffered "radial mile" interpretation, the less restrictive "lineal mile" interpretation of TDMC 10.13.050.150(C)(2) is more consistent with this policy:

- "American public opinion (80%) reflects that billboards both help create jobs and help businesses attract customers."¹
- "Billboards are an important means of communication, especially for local businesses. Billboard advertising in the State of Oregon benefits 2,061 local businesses that

¹ Source: Professor Charles R. Taylor as cited in Outdoor Advertising Association of America Inc.

851 SW Sixth Ave., Suite 1500 Portland, Oregon 97204- Main 503.224.6440 Fax 503.224.7324 DunnCarney.com
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Exhibit 2
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Ty Wyman
September 5, 2023
Page 2

employ 59,168 people. These local businesses are a cornerstone of the economy for the State of Oregon."²

The third listed Economic Development Goal is to "Encourage the growth of existing employers and attract new employers to The Dalles that complement the existing business community." The following evidence demonstrates that the "lineal mile" interpretation of TDMC 10.13.050.150(C)(2) is more consistent with this policy:

- "Outdoor advertisers are overwhelmingly local enterprises, not national businesses headquartered elsewhere...in excess of 70% per local market."³

Policy 10 is to "[e]ncourage tourism-related services as an element in the diversification of the community's economy." I note the following evidence regarding this policy:

- "In 2019, local recreationists and visitors spend \$289 million in Wasco County. That spending supported 3,700 full and part-time jobs and \$133 million in wages and other compensation."⁴
- "One out of every 5 dollars spent by advertisers on billboards is for travel and tourism."⁵
- "90% of auto travelers nationwide rely on billboards to locate gas, food, lodging and tourism attractions."⁶

From this evidence, I find that the "lineal mile" interpretation of TDMC 10.13.050.150(C)(2) is more consistent with Goal 9, Policy 10.

The tenth listed Economic Development Goal is to "[e]ncourage redevelopment and adaptive reuse of commercial space downtown as an alternative to commercial sprawl." I note the following evidence regarding this goal:

- "The economic lines of force driving the (billboard) industry - this magnet attraction for local advertisers who want to advertise close to their businesses and in certain premium commercialized areas (the commercial centers and the major arterials) means that the core economics of the industry are anti-sprawl."⁷
- "Outdoor advertising clients, studies show, believe that they maximize their outdoor medial spending by advertising close to their businesses and on routes that carry

² Outdoor Advertising Association of America, Inc. "Economic Impact of Billboard Advertising in the State of Oregon," 2007.

³ IMapData Inc., "Political Economic Analysis" October 15, 2001

⁴ "Economic Analysis of Outdoor Recreation in Oregon," published in 2021.

<https://industry.traveloregon.com/resources/research/oregon-outdoor-recreation-economic-impact-study/>

⁵ Competitive Media Reporting as Cited in Outdoor Advertising Association of America, Inc.

⁶ U.S. Travel Data Center as Cited in Outdoor Advertising Association of America, Inc.

⁷ IMapData Inc., "Political Economic Analysis" October 15, 2001



Ty Wyman
September 5, 2023
Page 3

heavy traffic - not residential neighborhoods and not roads on the more distant urban periphery of the city market."⁸

From this evidence, I find that the "lineal mile" interpretation of TDMC 10.13.050.150(C)(2) is more consistent with the City's tenth listed Economic Development Goal.

Thanks for the opportunity to assist. Please forward any follow up questions.

⁸ IMapData Inc., "Political Economic Analysis" October 15, 2001

Repealed by
92-1153

ORDINANCE NO. 915

An Ordinance relating to the erection, maintenance and use of signs; providing for permits for signs, and a Sign Board of Appeals, providing penalties, and declaring an emergency.

THE PEOPLE OF THE CITY OF THE DALLES ORDAIN AS FOLLOWS:

Section 1: Purpose and Scope. The purpose of this ordinance is to provide reasonable and necessary regulations for the erection and maintenance of signs in order to:

- (1) Protect the health, safety, property and welfare of the public.
- (2) Improve the neat, clean, orderly and attractive appearance of the City.
- (3) Improve the effectiveness of signs in identifying and advertising businesses and facilities.
- (4) Eliminate signs that invite, rather than demand public attention.
- (5) Provide for the reasonable, orderly and effective display of outdoor advertising.
- (6) Preserve, protect and enhance the economic, scenic, historic and aesthetic values and objectives of the City and its citizens.
- (7) Provide effective signing to meet the anticipated differing needs of various areas in the City.

Section 2: Definitions. Words used in the present tense include the future, the singular number includes the plural, the word "shall" is mandatory and not directory, and the word "building" includes "structure" other than "sign structure". Types of signs are described under the term "sign". Unless the context otherwise requires:

- 1 -

Exhibit 3
Page 1 of 2

it is necessary for the building to be located more than 50 feet from major frontage right-of-way the Building Official shall have the power to grant a permit for a second principal sign near the right-of-way. All occupant signs within a single structure shall be coordinated together so as not to be in competition.

One secondary sign per occupancy is permitted on a second street, alley or parking lot frontage, provided the sign is no larger than 12 square feet in area.

One directional sign is permitted for each motor vehicle entrance or exit -- limited to a maximum of 4 square feet each.

Section 18: Off-Premise Advertising Signs. Advertising signs shall be located in commercial or industrial zones, as designated by the City Zoning Ordinance. The maximum number of advertising signs shall not exceed 8 per mile with no more than five on one side of the street and no closer than 500 feet apart when measured along the street centerline and measured at right angles thereto.

(1) No sign shall be more than 14 feet high nor more than 48 feet long, measured on the longest side of the sign. Sign area shall not be greater than 672 square feet.

(2) In measuring to determine sizes within the requirements of this Section, border and trim shall be included, but foundation, supports and stringers shall not be included.

Section 19: Home Occupation Signs. Home occupations, as defined in the City Zoning Ordinance are permitted no more than one sign which shall not exceed two square feet in area, and be placed on the building.

Section 20: Shopping Centers. Shopping Centers shall be allowed one principal sign to identify the center. All signs

Minutes of
THE DALLES PLANNING COMMISSION

September 1, 1994

The Dalles Public Library Meeting Room
722 Court Street

CALL TO ORDER

The meeting was called to order at precisely 7:00 p.m.

ROLL CALL

The following Commissioners were present: Terry Turner, Chairman; Michael Maier; David Peters; Thomas Quinn; Walter Hoffman; Ken Farner; and Marianne Barrett. No Commissioners were absent.

The following staff members were present: Scott Keillor, Senior Planner; Gene Parker, City Attorney; and Collese Dahlberg, Administrative Assistant.

Others present included: Jim Foster and Bert Streeter, representing Meadow Outdoor Advertising; Roger Thompson, Electric Sign Service; and Ken Neilsen, representing Wood Art.

PUBLIC COMMENT None

MINUTES August 18, 1994 - Farner moved and Peters seconded to approve the minutes as distributed. The motion passed with Maier abstaining.

Farner asked if Keillor had anything to report in regards to the State Marine Board's acceptance of the Riverfront Trail location. Keillor said that the new plan had been delivered and he was of the impression the State Marine Board had approved the change of location before the Port Director submitted the new plan to the City.

LEGISLATIVE HEARING

CONTINUATION OF SIGN ORDINANCE AMENDMENT NO. SOA 59-94

Amendments may be considered for all parts of the Sign Ordinance No.92-1153. Specifically, the Commission will review outdoor advertising signs and motor vehicle directional sign provisions.

Keillor reviewed the reason for the amendments. He said that although it was rewritten in 1992, the current sign ordinance still contained some conflicting language and some ambiguity. He reviewed the information (table and survey) that had been mailed to the Commission earlier.

The table represented a comparative analysis of sign codes of The Dalles; Nampa, Idaho; and 7 other Oregon cities. The analysis showed that The Dalles is quite liberal in regards to signs. Also included in the mailing had been a survey of The Dalles Area Chamber of Commerce Economic Development Committee in 1991.

Exhibit 4
Page 1 of 2

Keillor explained that he would like direction from the Commission before he begins drafting new language. He said that some areas he would like the Commission to discuss would be billboards, height and square footage to be allowed. The Commission had questions and comments regarding the table.

It was noted that our sign ordinance had no provisions for historic sign regulation.

If a sign is painted on the inside of a businesses window the sign is not regulated. However, if that same sign were to be painted on the outside of the window, it would require a permit. This was another example of holes in the sign ordinance.

When preparing the analysis Keillor found that some ordinances referred to a billboard as off-site or off-premise advertising. Bend has certain streets specifically called out in the ordinance where billboards are prohibited, and gives a cap on the allowed total number of billboards.

The Dalles allows 8 billboards per lineal mile of freeway. If all billboards allowed by ordinance were built, there would be about 50. This is the same as the state law. In addition, the billboards must be 500 feet apart and only 5 per side of road per mile. On local streets in general commercial and industrial zones the signs are limited to 288 square feet, 8 per mile and 300 feet apart.

Foster said that the City ordinance mirrors the State ordinance [regarding the freeway]. It was noted that the City could chose to be more restrictive.

Foster recited figures showing that in the last several years The Dalles has experienced a decrease of 3800 square feet of billboard space. He said that his client believes they can serve their customers with the signs they currently have.

Barrett asked if it would be safe to say that The Dalles has one of the most liberal sign ordinances in the State. Barrett said that it seems The Dalles is the only city in the Gorge that will absorb new billboards since Hood River is so strict.

The State will permit a company to move a sign 100 miles from its current location. There are a finite number of permits and the State is not increasing that number.

Foster thought that the only cities (of 200 cities in Oregon) in the State that don't allow outdoor advertising were reflected in the table presented by staff. He said that it's not true that The Dalles is the most liberal. He said that LaGrande, Medford and Grants Pass all have ordinances that are similar to ours.

Minutes of September 1, 1994

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Exhibit 4
Page 2 of 2



CITY ATTORNEY'S OFFICE
CITY OF THE DALLES
313 COURT STREETS
THE DALLES, OREGON 97058

(541) 296-6481 ext. 1150
FAX (541) 296-6906

MEMORANDUM OF LAW

TO: Planning Commission
FROM: Jonathan Kara, City Attorney
DATE: September 7, 2023
RE: **Response to Appellant's September 5, 2023, Memorandum
J.R. Zukin Corp. d/b/a Meadow Outdoor Advertising
Appeal No. 033-23 - Sign Permit Application No. 2589-23**

INTRODUCTION

On September 5, 2023, Dunn Carney LLP (**Counsel**) a law firm in Portland, Oregon, and engaged by Appellant for this matter, submitted a memorandum addressed to the Planning Commission (**Memorandum**) for inclusion in this Appeal's record. The **Memorandum** provides legal arguments and theories supporting Appellant's appeal petition to the Planning Commission to reverse the Community Development Director's decision denying Sign Permit Application No. 2589-23.

I reviewed the **Memorandum** and disagree with its arguments, theories, and conclusions, each of which appear to ignore or otherwise overlook dispositive facts and law – my legal analysis below addresses each point in the same order Counsel introduces them in the **Memorandum**.

ISSUE

The only issue in this Appeal appears to be whether the City's off-premises sign regulations call for a lineal or radial measurement of the distance between billboards (to determine how **8 per mile** should be considered). If the Planning Commission grants the Appeal petition, it must find:

- TDMC 10.13.050.150(C)(2) (**Spacing Rule**) calls for a *lineal* distance measurement (i.e., following the bends and narrows of street where the sign is located for 1 mile) and not a *radial* distance measurement (i.e., with the sign as the center of a circle having a 1-mile radius); and
- TDMC 10.6.070.030 (**Measurement Rule**) does not apply to billboards.

Both of the above findings (which Counsel's **Memorandum** urges you to adopt) seem unsupported and inconsistent with the text, in context, of the City's land use and development ordinance (TDMC Title 10 or **LUDO**), applicable Oregon law, or logic.

CONCLUSION

The **Memorandum** highlights Counsel's misinterpretations, mistaken assumptions, incomplete analyses, and confusion of the issues, facts, and Oregon law to support Appellant's strained argument the Spacing Rule and Measuring Rule require the Planning Commission to grant its Appeal by finding the distances between billboards must be uniquely, counterintuitively, and conveniently measured linearly by road mile. On the other hand, nothing about the City's

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interpretation takes a broad, flexible, or particularly creative position: **distances are measured horizontally**. The City urges its Planning Commission to deny Appeal No. 033-23.

ANALYSIS

1. General Principles of Interpretation.

The **Memorandum** provides:

In discerning the meaning of a land use regulation, Oregon law directs each city and county to consider the text and context thereof. If the code text reveals the meaning, then the inquiry ends there. If, however, that text is ambiguous, then the municipality must look to the context of how the regulation was adopted and has been applied. See, e.g., Estroff v. City of Dundee, 79 Or LUBA 189 (2019).

Actually, Oregon law provides discerning the meaning of a municipal code provision requires the City to determine intent of the *City Council* when it enacted the provision, not the Community Development Department (**CDD**) or Planning Commission. Despite Oregon law's clarity on this point, the **Memorandum** and other supporting documents and evidence submitted by Appellant appear to indicate Counsel's misunderstanding of Oregon law by elaborating on CDD staff comments and Planning Commission meeting minutes as indicia of intent supporting Appellant's interpretation of the Spacing Rule – that approach misses the appropriate legal standard and confuses the issue before the decision-maker.

As detailed in **Section 4** below, CDD staff comments or Planning Commission understandings are irrelevant for the determination the City is required to make in this Appeal – Counsel's **Memorandum** and Appellant's slated testimony appears to either ignore or purposefully misstate the binding law of statutory construction.¹

Simply: the City Council's intent is determined by the express text of the City ordinance, in context, and in light of relevant legislative history. When the text of a specific provision is ambiguous, Oregon courts will look to the context within which the specific provision is located, including surrounding code provisions and the legislative history.² The purpose of that analysis is to determine the intent of the governing body (i.e., the City Council) that enacted the legislation.³

Here, the perceived ambiguity centers (no pun intended) on whether the Spacing Rule in isolation requires the measurement of a mile to be calculated as a *linear* or *radial* measurement. Oregon law requires the City to investigate the Spacing Rule's context to determine the City Council's intent when it enacted it.⁴ Due to its vagueness, the City looked at the Spacing Rule in context with the Measurement Rule, which resolves all ambiguity as to how the distance should be measured. The City understands the Spacing Rule's context to demand a radial measurement. Please see **Section 2**, below.

2. Measurement.

The **Memorandum** provides:

¹ *Lincoln Loan Co. v. City of Portland*, 317 Or 192, 199 (1993).

² *State v. Gaines*, 346 Or 160 (2009).

³ *Siporen v. City of Medford*, 349 Or 247 (2010).

⁴ *Id.*

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I disagree with staff's premise, that TDMC 10.0610.6.070.030 is relevant context for applying TDMC 10.13.050.150(C)(2), as well as its above-quoted conclusion.

TDMC 10.6.070.030 reads as follows: [cite omitted for brevity]

This text, alone, evidences that it does not apply to placement of billboards. Rather, by its terms, that provision applies only to measurement of setbacks and structural dimensions. Indeed, a graphic included under TDMC 10.6.070.030 bears out its limited application.

[graphic omitted for brevity]

TDMC 10.6.070.030 goes on to explicitly state that "[t]hese distances are not measured by following the topography of the land." This further supports a conclusion that it does not apply to placement of billboards, as all would agree that, whether measured in a radial or a lineal manner, the 8 per mile limitation may be measured only by topography.

How distances, heights, slopes, areas, widths, depths, diameters, and other units are measured is critically important to land use and development, which is why the City enacted TDMC Title 10, Article 6.070 (Measurements) – its first section succinctly provides:

This Article explains how measurements are made in this Title.⁵

TDMC Title 10, Article 6.070 contains general regulations applicable broadly across the City's entire LUDO. Relevantly, the Measurement Rule provides the general regulation applicable to measuring distances in TDMC 10.6.070.030(A):

- 1. Distances are measured horizontally. When determining distances for setbacks and structure dimensions, all distances are measured along a horizontal plane from the appropriate property line, edge of building, structure, storage area, parking area, or other object. These distances are not measured by following the topography of the land. [graphic omitted]*
- 2. Measurements are shortest distance. When measuring a required distance, such as the minimum distance between a structure and a lot line, the measurement is made at the shortest distance between the 2 objects. See Figure 6-2. (Exceptions are stated in subsections B, C, and D of this section.) [graphic omitted]*

Put another way, the Measurement Rule (which is applicable to the entire LUDO, unless listed in TDMC 10.6.070.030(B), (C), or (D), or unless a more specific provision is applicable) is:

1. distances are **measured horizontally**⁶; and
2. measurements between 2 objects are the **shortest distance** (the shortest distance being, in all cases, a straight line between them).

Counsel and its **Memorandum** simply misinterpret the Measurement Rule. Appellant reads the first two sentences as if they are a single sentence – that is, as if the requirement to measure distance horizontally *only* applies to setbacks and structural dimensions. To the contrary: the first sentence establishes the general rule for purposes of TDMC Title 10 that "distances are measured horizontally." This statement establishes a broad standard applicable across the

⁵ TDMC 10.6.070.010 (Purpose).

⁶ TDMC 10.6.070.030(A)(1)'s second sentence clarifies the general Measurement Rule as applied to measuring distances for setbacks and structure dimensions (which can and do vary for each development site): those distances are measured along a horizontal plane (i.e., a two-dimensional surface parallel to the ground) from the property line, edge of building, structure, storage area, parking area, or other object.

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entire LUDO. The second sentence then clarifies how topography is not a standard when applying measurements, since considering topography would result in inconsistent application of the Measurement Rule based on each development site's unique characteristics – for example, when using a standard measuring wheel, a site with rolling topography would result in a different setback measurement than a level site: to avoid that discrepancy from impacting the City's development standards, the Measurement Rule clarifies **distances are measured horizontally**.

The **Memorandum's** stated misinterpretation here results in a circular and conclusory argument: by misunderstanding, misstating, or ignoring the applicability of the Measurement Rule's first sentence to all distances, Counsel appears to argue the Measurement Rule's third sentence supports Appellant's conclusion billboards are exempted from Measurement Rule because the Spacing Rule requires a topographical measurement. If the previous sentence does not seem to make sense, that is because it does not.

Counsel's **Memorandum** overlooks, fail to includes, or otherwise omits TDMC 10.6.070.030(A)(2)'s directly on-point provision: **measurements are shortest distance**, unless specifically excepted. Those exceptions are specifically listed for vehicle travel area measurements (e.g., garage entrance setbacks), measurements for certain chimneys, eaves, and bay windows, and exempting underground structures from measurement calculations.⁷

Despite creating other exceptions to the Measurement Rule, the City Council did not create an exception for the measurement of the distance between billboards for purposes of the Spacing Rule – if it wanted an exception to the Spacing Rule, the City Council could have similarly carved one.⁸ Since the City Council did not carve out such an exception when it adopted the LUDO, the City must apply the Measurement Rule to billboards (and all other non-excepted measurements) as presented in TDMC 10.6.070.030(A).

3. **Comprehensive Plan.**

The **Memorandum** provides:

... Here, as described in the attached memorandum of Dunn Carney paralegal Jasmine Vasquez (Ex. 2 hereto), plan policies support a reading of TDMC 10.13.050.150(C)(2) as applying per lineal, rather than radial, mile.

Put generally, Jasmine's memo explains how the plan calls for the very kind of economic development that billboards support. Furthermore, I understand that the Commission can expect to take substantial testimony at hearing as to the positive effects that billboards have on the local economy.

⁷ TDMC 10.6.070.030(B)-(D).

⁸ The legal maxim *inclusio unius est exclusio alterius* (known as the "implied exclusion rule") is a canon of legislative construction implemented by courts when examining municipal codes, contracts, and state and federal laws. It generally provides: when a law explicitly mentions one or some things, the presumption is that other things are excluded. For example, if a statute indicates "No person shall drink orange juice, apple juice, cranberry juice, grape juice, or pineapple juice", then that statute does not prohibit a person from drinking lemonade – more importantly, it evinces a legislative intent to specifically list prohibited juices, therefore indicating lemonade is not a prohibited juice because it was not mentioned (while others were). The concept here is the reviewing court considers the legislative body to have put enough thought into that law to include specific prohibited juices, so the reviewing court concludes the legislative intent was to purposefully exclude lemonade (and all other juices).

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Comprehensive Plan policies are broad, aspirational statements regarding the City's goals. The Comprehensive Plan policies described in the Vasquez memo concern the City's economic development goals, including a more diverse economy, encouraging "redevelopment and adaptive use" of downtown commercial space, and the growth of small businesses – none of those can reasonably be understood as authorizing billboards. (I would be surprised if there are not other livability goals in the Comprehensive Plan, such as promoting an attractive downtown or reducing visual clutter, that would support removing billboards.)

Appellant's argument seems to be billboards are supported by Comprehensive Plan policies because billboards promote economic activity. Actually, those general policies provide no support for Appellant's misinterpretation of the Spacing Rule – many billboards do not even promote economic activity in the City, and Appellant does not explain why a billboard that promotes commercial activity elsewhere supports the redevelopment of commercial space in downtown The Dalles.

4. Legislative History.

The Memorandum provides:

Another source of context is the history of adoption of the regulation. On our research, the City first regulated billboard placement in 1974 by Ordinance No. 915 (Ex. 3 hereto), which established the existing rule – "The maximum number of advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street." The City later passed Ordinance 81- 1011, containing the exact same language.

In the early 1990's, the Planning Commission considered its sign regulations. It ended up making no change, but the process demonstrates the intent to limit advertising signs to 8 per lineal mile of roadway. Specifically, minutes of the Sept 1, 1994 Planning Commission meeting reflect the following comment from Senior Planner Scott Keillor, "The Dalles allows 8 billboards per lineal mile of freeway." (Ex. 4 hereto.) Mr. Keillor worked then under Planning Director Dan Durow. Mr. Durow has confirmed that Mr. Keillor's comment reflected the Director's interpretation of the relevant code language. We expect him to testify as such to the commission.

When the Oregon Land Use Board of Appeals and Oregon courts evaluate a municipal code provision, their goal is to determine the legislative intent: namely, the intent of the respective city council when it enacted the provision. **Section 2's** discussion on the applicability of the Measurement Rule to resolve the Spacing Rule's ambiguity appears conclusive and the City's opinion is the inquiry into the Spacing Rule's intent should be finalized there.

However, even if a reviewing court examined the legislative history further: no matter their title, what a City staff person, Planning Commissioner, or even the Planning Commission believed or intended when the City Council enacted the Spacing Rule is irrelevant under Oregon land use law, and Appellant does not provide any evidence of what the City Council itself intended when it enacted the Spacing Rule.

Actually, in 1992, the City Council rejected a proposal from Appellant⁹ to add the words "road mile" to the Spacing Rule. Therefore, reading the words "road mile" into the Spacing Rule now is patently inconsistent with previous City Council actions and is the opposite of its intent.

⁹ Letter from *Lewis, Foster & Peachey* on behalf of Meadow Outdoor Advertising to The Dalles Planning Commission (February 4, 1992).



CITY OF THE DALLES
313 COURT STREET
THE DALLES, OREGON 97058

(541) 296-5481 ext. 1125
COMMUNITY DEVELOPMENT DEPARTMENT

MEMORANDUM

To: Planning Commission
From: Joshua Chandler, Community Development Director
Date: September 7, 2023
Re: **Permit Records Search - Appeal No. 033-23**

On September 5, 2023, Dunn Carney LLP (**Counsel**), representing the Appellant, J.R. Zukin Corp. d/b/a Meadow Outdoor Advertising, submitted a memorandum addressed to the Planning Commission (**Memorandum**) for inclusion in this Appeal's record.

Included within that Memorandum, Counsel made the unsubstantiated claim the City's Community Development Department has historically interpreted billboard placement measurements on a "linear mile" basis. Although Counsel referenced a 1992 Planning Commission meeting when the Appellant requested the addition of "road mile" into the sign ordinance text, the Planning Commission did not make that requested change and instead kept the language as it currently reads. The current ordinance text has remained the same for the last 31 years. Failing to include this language was clearly intentional; however, Counsel insists that process demonstrated "the intent to limit advertising signs to 8 per linear mile of roadway."

Additionally, Counsel included minutes from the September 1, 1994, Planning Commission meeting, where the minutes reflect a Senior Planner provided "The Dalles allows 8 billboards per lineal mile of freeway." That statement was later confirmed by former Planning Director Dan Durow to be consistent with his own interpretation. Although neither the Planning Commission nor the City Council added the qualifying words "road mile" to the sign code, the former Director took it upon himself to establish his own interpretation as the City's de facto staff policy on the matter. As the City Attorney's memorandum of law underscores: no matter their title (regardless of whether it is City staff, Planning Commissioner, or even the Planning Commission itself), whenever the Oregon Land Use Board of Appeals and Oregon courts evaluate a municipal code provision, their goal is to determine the legislative intent – namely, the intent of the *City Council*.

After reviewing Counsel's September 5 memorandum, the Community Development Department staff conducted extensive research into previously approved billboard permits to determine how this staff policy has been enforced in the past. This research included searching the log book of sign permits (dated from 2006-2023), all documented paper files of all addresses within 100' of each existing billboard, and digital permit files (spanning from about 2018-2023): ultimately, all known files in the City's possession.

Appellant's notice of intent to appeal for APL 033-23 indicates it owns and operates 42 billboards within the City limits; the Community Development Department's exhaustive search found only 20 billboard permits. Specifically:

Of these 20 permits, the following data was gathered:

- 2 of the 20 permits were duplicates, which leaves 18 individual permits.
- Of the remaining 18 permits, 3 permits authorize only billboard maintenance, repair, and relicensing (which activities do not require permits), which leaves 15 individual billboard permits.
- Of those 15 individual billboard permits:
 - 4 permits were approved in the wrong zone district (only the CG and I zone districts have allowed billboards since at least 1992).
 - 4 permits included "linear or road mile" distance measurements to billboards in the vicinity (**11 permits had no mention of any distance measurements to other billboards in the vicinity**).
 - 2 permits did not include a City sign permit (only having Oregon Department of Transportation approval).

Clearly from this research, it is difficult to claim that the "road mile" or "linear" interpretation has been the historical standard, or whether review of billboards as a whole have had much of a standard altogether.

The Dalles City Sign Code 92-1153

A. Primary and Secondary Highways.

The maximum number of advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street

and no closer than 500 feet apart when measured at right angles to the street or highway centerline to which the sign is oriented. Sign area shall not exceed 672 square feet, with maximum dimensions of 14 feet vertical and 48 feet horizontal.

B. City Streets.

The maximum number of advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street

and no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented. Sign area shall not exceed 288 square feet, with maximum dimensions of 12 feet vertical and 24 feet horizontal.





Community Development Department
ATTN: Planning Commission
313 Court Street
The Dalles, Oregon 97058

From: Daniel C Durow, 1628 W. 13th Street, The Dalles, Oregon, 97058

RE: Appeal of Sign Permit No. 2589-23, Application Denial.

Dear Planning Commissioners.

Recently, I was contacted by the applicant for the appeal of this sign permit denial. I was asked to review the staff report and other pertinent information and comment on what I found.

I was the Community Development Director for the City of The Dalles from 1990 through 2012. In that capacity, I directed and participated in at least one major revision and several other lesser revisions to the sign code over the years. I also participated in administrative decisions and the preparation of staff reports in which the sign code was interpreted and applied.

Because of this unique position, my comments that follow are not necessarily made on behalf of the applicant or the City. I am making these comments to help the Planning Commission understand the intent and customary interpretation of the code as I, and my staff, did throughout that time. As it appears, these past decisions and interpretations are an important element in making the current findings on this appeal.

The key issue revolves around the Code Section 10.13.050 (C)(2), which reads in part:

"The maximum number of advertising signs shall not exceed 8 per mile with no more than 5 on one side of the street and no closer than 300 feet apart when measured at right angles to the street centerline to which the sign is oriented."

First: The current staff report for Appeal No. 033-23, interprets this section to mean a one-mile radius distance from the proposed sign location. This interpretation is not consistent with the intent on how the ordinance was written, interpreted, or applied during my tenure. In fact, I could not determine how a radius measurement might be devised from this language. The language was clearly intended to be interpreted as linear measurements not an area measurement.

Second: I have reviewed the exhibits provided by staff and tried to understand how this area interpretation could be applied and still make sense, but it just doesn't. The one-mile radius encompasses an area of 3.14 square miles; over two thousand acres. It includes an area ranging from the airport property on the Washington side of the river on the north, to a portion of the Community College property on the south, then west to the intersection of 10th and Chenoweth Loop Road, and then east to include the marina. There are many more than eight signs within this expansive area, all of which become non-conforming under this interpretation. Creating many non-conforming signs was not the intent of the language noted above.

Third: The intent of the broader language of the sign code was to reach a balance between the needs of the traveling public and businesses to advertise, and the negative esthetics and ineffectiveness of having too many signs. This balance is not based on some scientific formula but on the needs and desires of the community. This balance can and does change over time. But this is a policy decision determined through hearings with adoption by the City Council, not by what appears to be an inconsistent, unusual, and unsupported interpretation of a section of the code.

Fourth: The staff report notes on page 8, first paragraph, that distance measurements are made according to Section 10.6.070.030(A)(1) which reads:

"Distances are measured horizontally. When determining distances for setbacks and structure dimensions, all distances are measured along a horizontal plane from the appropriate property line, edge of building, structure, storage, storage area, parking area, or other object. These distances are not measured by following the topography of the land."

This language was specifically intended to measure setbacks and other structural dimensions on a parcel of land that had a non-zero slope. When the distance to a structure is measured on a sloped line, greater or lesser than 0 (zero) degrees, the resulting horizontal setback or other structural dimensions would end up being either more or less than what the code intended. This language was added to make it clear how setbacks and other structural dimensions would be measured on a property that had a non-zero slope.

Thank you for the opportunity to pass along information that may be helpful in your deliberations.

Sincerely,



Daniel C. Durow