

Cold Spring Planning & Zoning November 10, 2010

The regular meeting of the Cold Spring Planning and Zoning Commission was called to order by Chairman Stephen Taylor. Pledge to the flag was recited. The roll call showed the following present – Alan McCullough, Tom Ross, Donna Schmidt, Vince Sticklen, Stephen Taylor, and Tami Trunick – excused was Christopher Vaught. Also present were City Clerk Rita Seger, Administrative Officer Michael Vank, and NKAPC staff member Andrew Videkovich.

Stephen Taylor pointed out the exits from the building, per Fire Department regulations.

The October 13, 2010 regular meeting minutes were reviewed by all. Stephen Taylor requested a date change on page 3, 4th paragraph. Vince Sticklen made a motion to approve the minutes as amended and Alan McCullough seconded motion. All were in favor. Motion carried.

Stephen Taylor stated that on October 19, 2010 he signed two ID plats for reconfiguration of existing lots 17 and 18 of Goetz Drive in the name of Fidyk and Hamilton; on October 20, 2010 he signed a final plat for Granite Spring section 19 with guarantee; and tonight, November 10, 2010 he signed a final plat for Ivy Ridge Condominiums, section 14 building 8. Vince Sticklen made a motion to approve these signings, and Donna Schmidt seconded the motion. All were in favor. Motion carried.

There were no public hearings scheduled for tonight's meeting.

Steve Taylor stated that the Planning and Zoning Commission received correspondence regarding a planning and zoning training session being held at the City of Highland Heights this Saturday. Tom Ross, Donna Schmidt, and Tami Trunick have signed up to attend.

Stephen Taylor opened up discussions on sign regulations and automated LED reader boards.

Andrew Videkovich of NKAPC addressed the Board. At the request of councilmember Brenda Helton, this Board asked NKAPC to research the LED signs, also termed as automatic changeable copy signs. Mr. Videkovich stated that the only zone within Cold Spring that permits such signs or reader boards is in the SDA zone, which is in a limited area of the city. Mr. Videkovich pointed out a correction on the letter that he sent to this Board which stated that NKAPC interprets such signs as manual changeable copy only, when in fact the zoning ordinance does define a reader board as being a manual or an electronic changeable copy sign, which is allowed in the SDA zone. One of the options that the city could consider is to add the reader board terminology to other commercial zoning districts. There are many other issues in the sign regulations, not just the reader boards, that have been addressed in Kenton County and should be addressed in Cold Spring as well.

Several years ago several jurisdictions in Kenton County had their sign ordinances challenged by a billboard company as being unconstitutional. They had to scramble to get a quick fix text amendment through the process to avoid having their sign ordinances deemed unconstitutional and having their whole zoning ordinance thrown out. This was a wake up call and NKAPC hired Duncan Associates, a nationally recognized consulting company, to review the Kenton County zoning ordinances, look at the issues and come up with different regulations. The Cold Spring sign regulations are based on that same model so some of the problematic issues in Kenton County also apply to Cold Spring as well. Eric Kelly, PhD of Duncan Associates gave a presentation to the Northern Kentucky Area Council regarding this specific topic. Mr. Videkovich has a DVD of this presentation which this Board will view tonight. NKAPC also provided the Board with a copies of Dr. Kelly's review of sign regulations, along with a copy of our current sign regulations and Appendix C which contains suggested amendments.

Vince Sticklen questioned, with our current sign ordinance, if billboard companies who challenged these sign regulations could really come into Cold Spring, because we don't have room for big billboards in our city. Mr. Videkovich replied that we do have a lot of frontage along the AA Highway. Right now our sign ordinance does not allow billboards, but these companies could come in and find some problematic language in our regulations that could be challenged. We are not in eminent danger of litigation, but it is out there. When the consultant looked at the sign regulations as a whole there were other problematic issues.

Councilman Lou Gerding was in the audience and questioned if the sign ordinances that had been challenged were actually won, or just could have possibly been won. He also stated that the term "problematic" is Staff interpretation but it is really a judge who makes this decision. Mr. Videkovich stated that the challenges could be possibly won, but there is definitely case law in other parts of the country to substantiate this concern. Mr. Videkovich stated that he uses this word "problematic" because this is the word used often in Eric Kelly's presentation.

The Board then viewed this DVD presentation dated May, 2007 by Eric Kelly of Duncan Associates. He outlined the various types of signs, both commercial and non-commercial, and the purpose that they serve, such as opinion or campaign signs covered under the first amendment, signs that communicate place specific information or warnings, signs that help us find specific businesses, or signs that are “way finding” guides in the community. They are a significant form of advertising, especially for small businesses, but if not regulated, they can distract drivers and add or create clutter in a community.

Sign ordinances around the country are full of exceptions, which may be hard to explain in court. He stated that many ordinances use an exception, especially regarding special events signs with the problematic wording of “duly authorized”, but these type references should always be defined. Signs must have objective standards and must not be regulated by the content. They recommend that we not require permits for signs not visible from the street, such as directional signs, instructional signs or menu boards, but such signs may still have rules, such as size and lighting. We really want to just regulate what is important, and not small basic signs that are not a commercial message. Signs inside the building are usually exempt from regulations. Some signs are governed by other standards such as zoning notices, judicial sales or signs covered under the uniform traffic standard regulations.

Dr. Kelly reported on the current Kenton County sign regulations and how they could be amended and improved. He gave examples of various litigations on sign ordinances in other cities in other parts of the country, that sometimes went to the supreme court.

Eric Kelly stated that you should never allow signs in the right of way, because if you allow one to do it, you have to allow them all, whether commercial or non-commercial. The only exceptions to this rule are traffic signs which would obviously be allowed.

Digital electronic signs are much more attractive than manual changeable signs, but if you use a full motion video on the sign it can be very distracting so these should be regulated. Some regulation examples are to allow these to change only once every eight seconds, or make the changes instantaneous with no fading effects, or only allow changes once per minute, and require automatic dimmers after dark. These electronic moving signs have a real place in a downtown or pedestrian areas where traffic is slow moving, but along freeways or arterials roads, full motion is too distracting.

Political statement signs are protected under the first amendment, but that doesn't give someone the right to place them in the right of way or place one so large or on a corner that blocks the view of oncoming traffic and creates safety problems. The basic rule is that if any sign is allowed in a particular place with particular characteristics, you better be sure that it can also express opinions.

Religious institutions with multiple signs can be regulated, but the reason they take out so many temporary signs are because the rules are too restrictive on their permanent signs. If you give them options of either larger manual or automatic signs with changeable copy space, they will use that and stop putting up banners and temporary signs. They do provide very important needs, but there has to be some limits.

Eric Kelly stated that the goal is to find a balance between the need for communication with our desire to minimize traffic hazards, reduce clutter, and improve the community appearance. This ended the presentation.

Andy Videkovich, NKAPC, then addressed the Board. He stated that current zoning permits changeable copy signs in the SDA zone ordinance, but things like the automatic dimming, changing instantaneously, and things like that are not in the current regulations and should probably be added. They also recommend that these type signs be allowed in other zones. Staff's point of view is to recommend considering the entire sign regulations, rather than just adopting or retro-fitting certain portions of it to our current regulations. Mr. Videkovich invited questions from the Board.

Steve Taylor verified that Attachment C contains the recommended text amendments, and that the Article XIV attachment is the current Cold Spring sign regulation with no changes reflected. He verified that the wording for automated and changeable copy signs, which are referenced in Attachment C are two different issues. Mr. Taylor had several questions referenced to sections in Attachment C as follows:

- Section 14.5 G refers to electronic signs in residential zoning districts, but the third bullet point is the only one that NKAPC specifically states as single family use. The other two bullets points under this subsection also refer to signs in residential areas, but do not spell out single family use.

- Section 14.6 D refers to regulating temporary subdivision signs and how soon they have to come down, as shown in subsections a, b, and c. Mr. Taylor is trying to determine what the distinction is between new subdivisions which are required to remove such signs upon the sale of ninety percent of their lots, yet new commercial developments such as Cold Spring Crossing are still allowed to have such signs up even upon ninety percent of their occupancy. These are just questions he is trying to understand at this point.
- Section 14.6 F refers to changeable copy signs, but the trend for the vast majority of signs seen at churches and schools are digital display signs. Mr. Taylor does not see the digital display signs listed as being acceptable. We say a changeable sign is good for a church or school, but why do we draw the line here on manual changeable copy signs, since the digital sign may occupy the same space but is not allowed.

Andy Videkovich replied that even if the digital signs are not allowed in a particular zone, because schools are exempt from zoning, they can get that type of sign. If you go to a church or private institution, that wording may be an issue.

- Section 14.9 refers to window and wall signs in the PO Zone but again there is no mention of changeable digital displays and he questions why we should not allow this type signs for small businesses such as an Office Max or Staples, and why they are being excluded.

Mr. Videkovich stated that changeable copy signs are not usually seen on a window or wall signs, but are more common on detached ground or pole signs. The wall or window signs are meant to be the big advertising signs drawing customers into the lot.

- Section 14.10 A. 2 refers to signs allowed in the HC Zone. It talks about allowing twenty-five percent of the sign face to be changeable, and he questioned whether that is for the overall area of the monument sign, or if it is twenty five percent of each individual sign face within the large monument sign, which may hold eight business signs or more. Mathematically whether that applies to each sign or the entire area is a huge difference. Mr. Taylor's stated that we must have wording to make this clear.

Mr. Videkovich stated that it comes down to how the measurements of that sign are taken, which is referred to in Section 14.16 A 3. For multi-faced signs, you would compute the sign area by adding the area of all sign faces visible from any one point. With an entire shopping center with eight or nine businesses it would be the rectangle of the entire shopping center sign itself. Twenty-five percent of that entire area would be changeable copy. Another way to view this is that the developer of the shopping center would come to you with the entire sign, and that is what would be looked at and approved.

- Section 14.5 A 4 refers to a clear sight triangle, and Mr. Taylor asked for clarification on what this is.

Andy Videkovich stated that whenever you have two roads intersecting, the regulation says say that no fences, walls, or other obstructions (such as signs), shall be erected in any zone within the triangle of a corner lot, fifty feet from the intersection. If you draw a triangle from each section of the intersection and connect it, there cannot be anything to obstruct views from within that triangle.

Steve Taylor stated that this is the first pass through of the recommended changes to the sign regulations but these are the items that caught his attention. As our businesses change and re-occupy space, then signage will become a bigger issue. LED signs are the latest marketing gimmick, and view-ability and motion is a big issue. Andy Videkovich replied that the electronic changeable signs do look better and are a lot cleaner. Sometimes money is a factor and it is cheaper to put up a manual changeable copy sign, so you should not limit this strictly to electronic signs.

Lou Gerding questioned if NKAPC's legal staff went through this. Andy Videkovich replied that their legal staff did a review. Also Eric Kelly is an attorney with experience with this, and Garry Edmondson is the Staff attorney, who does have a large zoning background.

Tami Trunick requested an explanation of Section 14.5 F. which refers to the area of an electronic sign which shall not constitute more than a 200 square feet area. Andy Videkovich said that in most zoning districts it says twenty five percent of the sign can be automatic changeable copy signs. This is saying that if you have a huge sign and twenty-five percent would be more than 200 square feet, you can only have a maximum 200 square foot automatic changeable copy sign.

Steve Taylor stated that at this point we should digest this information as a group and schedule another round of discussions and questions. After this Board has had time to look over this material, we can schedule a meeting and begin going through this on a point by point basis. We will discuss when to schedule the follow up meeting at the December Planning and Zoning Commission meeting.

Thirty minutes of continuing education credits due to tonight's sign regulation presentation by Eric Kelly and viewed on DVD were awarded to Board members Steve Taylor, Tom Ross, Alan McCullough, Vince Sticklen, Donna Schmidt, and Tami Trunick.

Alan McCullough made a motion to adjourn the November 10, 2010 meeting, and Vince Sticklen seconded the motion. All were in favor. Motion carried.

Respectfully submitted,

Rita Seger, City Clerk