



2456 Glendale Avenue • P.O. Box 12207 • Green Bay, Wisconsin 54313

Sept. 10, 2012

Mark Gottlieb  
Secretary, Wisconsin Department of Transportation  
4802 Sheboygan Ave., Room 120B  
Madison, WI 53705

RE: Billboards in the Village of Howard

Dear Secretary Gottlieb:

The purpose of this correspondence is to update you on recent developments in the Village of Howard regarding billboards impacted by the U.S. 41 Expansion Project (“Highway 41 Project”). Numerous billboards in the Village of Howard have been impacted by the Highway 41 Project. In most cases the owners of the impacted billboards have been compensated by the state, and the signs already have been or soon will be removed by contractors on behalf of the state. The Village has prohibited off-premise signs since the mid-1980s. Recently, the Village Board did amend its zoning code to be consistent with the sign realignment law recently inserted into Section 84.30 (5r), Wis. Stats.

As a result of the Highway 41 Project, three NextMedia billboards were taken. In one instance, NextMedia made application to the Village for permission to replace those billboards with two new billboards. This application was made after the billboards already had been taken down. The Village’s Code Administrator denied the permit; NextMedia appealed his decision to the Village’s Zoning Board of Appeals and the decision was upheld. NextMedia sued the Village Zoning Board of Appeals in Circuit Court. Simultaneously, NextMedia sued the Village in federal court claiming the Village’s ordinance prohibiting off-premise signs is unconstitutional. The Village is committed to litigating both pending cases to conclusion.

In a more recent instance, NextMedia applied for a permit to realign a billboard along State Highway 29. Both NextMedia and the property owner had been compensated by the state for the removal of this sign. The Village’s Code Administrator denied the permit on the grounds that the application was really for a substantially new sign, not a realignment of what was already removed from the site. Next Media appealed his decision to the Zoning Board of Appeals and initially prevailed. The Village then filed a motion to reconsider after learning the DOT believes it purchased from the property owner all rights to have signs on this site. The Zoning Board of Appeals heard this testimony and vacated the previous decision. The Village anticipates it will be sued again by NextMedia. The Village is concerned that while these cases are moving through the court system, NextMedia will seek additional changes in state law or attempt to purchase back the rights to place a billboard on properties for which the DOT has already made compensation.

**The Village of Howard strongly urges the state and DOT to resist requests to further preempt local control of billboards and also implores the DOT to refuse to sell back any off-premise sign rights it has purchased.** Long term, the placement of billboards on many sites greatly hampers the redevelopment of these properties. This is especially true in more urbanized

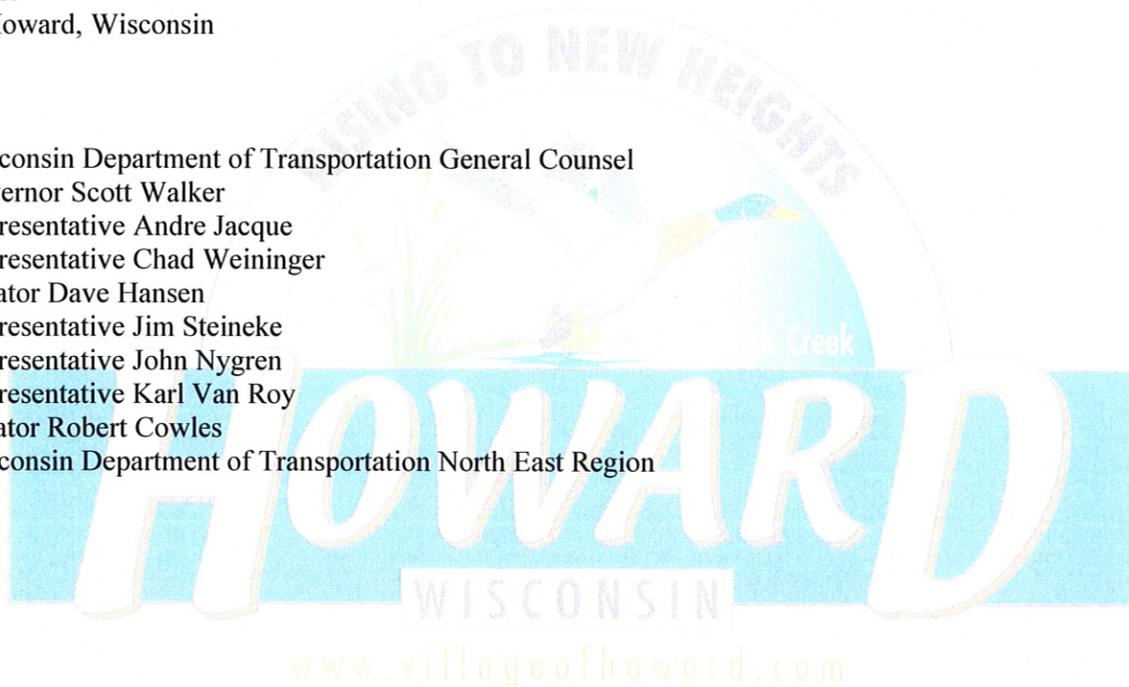
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corridors in which it may be simply too expensive for a developer interested in replacing a marginal use on a site with a large user which would provide greater tax base and significant employment opportunities. Also, when the state has to make future improvements to the corridors these billboards will once again be in the way of highway expansion and will drive up the cost of the projects.

Thank you for your consideration,

Paul F. Evert  
Administrator  
Village of Howard, Wisconsin

cc: Wisconsin Department of Transportation General Counsel  
Governor Scott Walker  
Representative Andre Jacque  
Representative Chad Weininger  
Senator Dave Hansen  
Representative Jim Steineke  
Representative John Nygren  
Representative Karl Van Roy  
Senator Robert Cowles  
Wisconsin Department of Transportation North East Region



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October 13, 2011

COPY

VIA E-MAIL (Mark.Gottlieb@dot.wi.gov)  
AND REGULAR MAIL

The Honorable Mark Gottlieb  
Secretary, Wisconsin Dept. of Transportation  
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Madison, WI 53705

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OCT 14 2011

WISCONSIN DOT  
OFFICE OF GENERAL COUNSEL

RE: Section 84.3(5r), Wis. Stats.  
Sign Realignment Law

Dear Secretary Gottlieb:

We respectfully bring to your attention a concern that has arisen with respect to the new sign realignment law enacted June 26, 2011, as Section 84.30 (5r), Wis. Stats.<sup>1</sup> ("Sign Realignment Law"), and apparent unilateral interpretation by the Wisconsin Department of Transportation ("DOT") staff at the direction of DOT attorneys. This firm represents NextMedia Outdoor, Inc. ("NextMedia"). Our client has multiple outdoor advertising billboard structures that have been and/or will be impacted by the Highway 41 Expansion Project ("Highway 41 Project"). As a result of the Highway 41 Project, the new road grade height in areas will be increased significantly, i.e., in excess of 25 feet, impacting several of our client's billboard structures which are located within the boundaries of the Village of Howard.

NextMedia has been in continuous contact with the DOT representative at the local office located in Green Bay with respect to the billboard structures located within the Highway 41 Project. NextMedia has been advised by the local DOT office that the DOT will be preparing an Offering Package for one property in particular upon which a NextMedia billboard structure is

<sup>1</sup> Section 84.30 (5r) SIGNS NONCONFORMING UNDER LOCAL ORDINANCES THAT ARE REALIGNED BECAUSE OF STATE HIGHWAY PROJECTS.

(a) In this subsection, "realignment" means relocation on the same site.

(b) If a highway project of the department causes the realignment of a sign that does not conform to a local ordinance, the realignment shall not affect the sign's nonconforming status under the ordinance.

(c) If in connection with a highway project of the department the department proposes the realignment of a sign that does not conform to a local ordinance, the department shall notify the governing body of the municipality or county where the sign is located and which adopted the ordinance of the sign's proposed realignment. Upon receiving this notice, the governing body may petition the department to acquire the sign and any real property interest of the sign owner. If the department succeeds in condemning the sign, the governing body that made the petition to the department shall pay to the department an amount equal to the condemnation award, less relocation costs for the sign that would have been paid by the department if the sign had been realigned rather than condemned. Notwithstanding s. 86.30 (2) (a) 1., and (b) 1., 1g., and 1r., if the governing body fails to pay this amount, the department may reduce the municipality's or county's general transportation aid payment under s. 86.30 by an equal amount.

(d) This subsection does not permit the alteration or movement of a sign that is nonconforming under this section.

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located, and that the DOT will be acquiring the sign site as well as the leasehold benefit. NextMedia and the property owner both desire to realign this particular billboard structure on the current site, and requested that the Village of Howard be contacted by the DOT representative as to the requested realignment.

The response NextMedia received from the DOT representative demonstrates an apparent unilateral interpretation of how "height" is to be calculated for purposes of "realignment", regardless of the new road grade. The email response from DOT to NextMedia read, in part:

"The Village of Howard will allow realignment but they will not allow the sign to be modified in any way such as raising the sign. Since the highway will be elevated to a height of 22' with a 48" barrier wall the sign will be below the road grade along the highway and you will not be able to see the sign. The severance damage that this will cause does not have to be reimbursed by the Village of Howard. The DOT attorneys directed me to acquire the sign site and leasehold benefit with the land."

This interpretation defies the Village of Howard's own code which dictates that the height of signs is measured using the grade of the street next to which the sign is located. Sec. 50-1220 (Definitions) of the code states "*Grade*" means the elevation or level of the street closest to a sign, measured at the street's centerline", and "*Height*" is defined as "the vertical distance, measured from the grade at the street right-of-way line where the sign is located, to the highest point of such sign." This is a standard manner in which to measure the height of signs, since topography should not dictate sign visibility to the roadway. Most state and local codes measure sign height in this way. Thus, where an improved roadway is raised, realigned signs can be raised by an equivalent amount because the height – as defined by the code – is identical before and after.

Furthermore, the State has already adopted relocation procedures that allow for height upon relocation to "maintain[ ] a comparable Height Above Road Grade (HARG) for the relocated Sign as compared to the existing Sign." The State's Moving Cost Agreement for the Relocation of Outdoor Advertising Signs, which has been in place since 1996, states, in part:

**4.2 Height Above Ground Level (HAGL)**

The Height Above Ground Level (HAGL) is the height of the Sign from ground level to the bottom of the Sign face. For Signs that have HAGL below or exceeding 15 feet, make adjustments as indicated in the Schedule on the Worksheet (Part 2.5) or the Contract (Part 3).

**HAGL to HARG: HAGL shall be based upon maintaining a comparable Height Above Road Grade (HARG) for the relocated Sign as compared to the existing Sign.**

(emphasis added). It is very troubling that the DOT would change a long-established policy to the State's financial detriment even though the clear intent of the new realignment statute is to save the public funds.

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It is our belief that the spirit and intent of the Sign Realignment Law is being circumvented when it is apparent that certain DOT employees are siding with local planners to override the clear intent of the new realignment statute by using a tortured interpretation of the height issue. The DOT's support of a municipality's refusal to consider realignment of a billboard structure at a height above road grade effectively renders the new Sign Realignment Law meaningless not only to our client, but to all outdoor advertising companies throughout Wisconsin, as well as the Wisconsin taxpayers. Moreover, such an interpretation ignores the State of Wisconsin and U.S. Supreme Court's cardinal and standard principle of statutory construction which requires that a statute may not be construed in such a way that makes any of the language inoperative, superfluous, void or insignificant. This error in interpretation will cost the State millions of dollars over the next few years if not promptly rectified and may embroil the State in needless litigation.

Our view of the intent of the new law is to recognize municipalities' rights to pass ordinances that do not allow relocation of signs; however, if they chose to pass such ordinances, the municipality, not the State, would bear the cost of the condemnation under these circumstances.

We respectfully request a response to the concerns outlined in this correspondence. We want to ensure that the Sign Realignment Law set forth at Section 84.30 (5r), Wis. Stats. is applied reasonably, accurately, and consistently by the DOT and its representatives in its interactions with property owners, sign companies, and municipalities.

Should you wish to discuss in more detail, please do not hesitate to contact the undersigned.

Thank you for your time and consideration.

Respectfully,

METZLER, TIMM, TRELEVEN, PAHL, BECK, S.C.

By:   
Cynthia Caine Treleven

CCT:esd (0911030)

cc: NextMedia Outdoor, Inc.

Attn: Mr. Don Snyder (via e-mail only)

Wisconsin Dept. of Transportation Office of General Counsel

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Representative Chad Weininger (via e-mail only, [Rep.Weininger@legis.wisconsin.gov](mailto:Rep.Weininger@legis.wisconsin.gov))

Senator Dave Hansen (via e-mail only, [Sen.Hansen@legis.wisconsin.gov](mailto:Sen.Hansen@legis.wisconsin.gov))

Representative Dean Kaufert (via e-mail only, [Rep.Kaufert@legis.wisconsin.gov](mailto:Rep.Kaufert@legis.wisconsin.gov))

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Secretary, Wisconsin Dept. of Transportation  
October 13, 2011  
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Representative Richard Spanbauer (via e-mail only, [Rep.Spanbauer@legis.wisconsin.gov](mailto:Rep.Spanbauer@legis.wisconsin.gov))

— Senator Robert Cowles (via e-mail only, [Sen.Cowles@legis.wisconsin.gov](mailto:Sen.Cowles@legis.wisconsin.gov))

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Ms. Janet Swandby, OAAW (via e-mail only, [Swandby@swandby.com](mailto:Swandby@swandby.com))

— Wisconsin Department of Transportation North East Region

Attn: Mr. Curtis Van Erem



## Wisconsin Department of Transportation

[www.dot.wisconsin.gov](http://www.dot.wisconsin.gov)

Scott Walker  
Governor

Mark Gottlieb, P.E.  
Secretary

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October 26, 2011

Attorney Cynthia Caine Treleven  
Metzler, Timm, Treleven, Pahl and Beck, S.C.  
222 Cherry Street  
Green Bay, WI 54301-4223

Dear Attorney Treleven:

I understand John Sobotik of our Office of General Counsel has spoken to you by telephone regarding the Department's decision to include NextMedia's sign in the Village of Howard when condemning the land upon which it now stands. The place where the sign now stands will be under an overpass that is about 22 feet higher than the base of the current billboard and will include a 4 foot high barrier wall. NextMedia's current sign, if moved over on the same real estate, would be invisible from the current highway for all practical purposes. After consultations between our real estate staff and counsel, they concluded that the fairest thing to do for NextMedia was to include the sign in the condemnation process rather than move it to a location where visibility would be so limited.

As explained to me, it is not clear that NextMedia would be allowed to reconstruct the sign if it were moved in order to raise it high enough to insure visibility from the highway. The Village of Howard would apparently oppose such an alteration in the sign and their ordinances would prohibit the erection of a new sign or changes to an existing sign at that location.

I understand that Attorney Sobotik has discussed the possibility of NextMedia pursuing realignment of the sign notwithstanding the risk of the Village not allowing the sign to be changed so that it would be visible from the new overpass. You will be discussing that option with NextMedia.

The Wisconsin Department of Transportation (WisDOT) agrees with the view you expressed that local rather than state taxpayers should pay for the expense of removing billboards that local officials permitted and no longer wish to have in their community. The peculiar fact in this case that the former sign location will be buried beneath more than 20 feet of earthwork makes it different than an ordinary case where a sign can simply be "moved over" on a site to accommodate a highway construction project. That accounts for WisDOT's special attention to NextMedia's interests in this case and the offer to buy the sign location.

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Attorney Cynthia Caine Treleven  
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Our goal is to treat all the parties involved in condemnation decisions fairly. We do our best to fairly compensate landowners, sign owners, and to accommodate the desires of local officials with whom we work. In this case, a desire to treat NextMedia as fairly as possible under the condemnation laws led to WisDOT's offer.

I am glad you are working with Attorney Sobotik to address your client's concerns and trust that your client will be treated fairly in this process.

Sincerely,



Mark Gottlieb, P.E.  
Secretary

ec: Mr. Don Snyder, NextMedia Outdoor, Inc.  
Governor Scott Walker  
Senator Michael Ellis  
Senator Robert Cowles  
Senator Dave Hansen  
Senator Jessica King  
Senator Frank Lasee  
Senator Luther Olsen  
Representative Garey Bies  
Representative Gordon Hintz  
Representative Andre Jacque  
Representative Dean Kaufert  
Representative John Klenke  
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Representative John Nygren  
Representative Alvin Ott  
Representative Richard Spanbauer  
Representative Jim Steineke  
Representative Jeremy Thiesfeldt  
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Representative Chad Weininger  
Mr. Curtis Van Erem, WisDOT Northeast Region  
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