



Meeting Date: Sept. 28, 2011
Agenda Item: # 7-8

Mission Statement
Provide quality services in a modern,
courteous and cost-efficient manner.

VILLAGE BOARD OF APPEALS STAFF REPORT

REPORT TO: President Burt McIntyre and Village Board of Appeals

REPORT FROM: James Korotev, Director of Code Administration

AGENDA ITEM: 6:05 p.m. PUBLIC HEARING – Concerning an Appeal by Renee M. St. Laurent Representing Next Media Outdoor, Inc., of the Decision of the Director of Code Administration, James Korotev, to Deny a Permit to Relocate an Existing Off-Premise Advertising Sign (billboard) Located at 2059 Shawano Avenue, VH-623-A

RECOMMENDED ACTION BY THE BOARD OF APPEALS

It is recommended that the Chairman of the Board of Appeals open the public hearing and ask the petitioner to explain her appeal in detail. Subsequently, the Board of Appeals should invite comments from the public and then close the public hearing. After the public hearing is closed, the Board of Appeals should review the petitioner's appeal and rule on the validity of the appeal. Section 50-208 of the Zoning Ordinance requires that *"The village board of appeals may reverse or affirm, in whole or in part, or may modify the order, requirement, decision, or determination appealed, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken."*

BACKGROUND INFORMATION

On March 13, 2010, the appellant submitted an application to the Department of Code Administration requesting a sign permit to allow an existing billboard sign located at 2059 Shawano Avenue, VH-623-A to be relocated due to state highway expansion and DOT right-of-way acquisition. In her application, the applicant proposed to remove the sign from its present location and relocate it on an adjacent parcel (VH-674 owned by Sanimax) approximately 450 feet to the northwest. It is not clear whether the intent was to rebuild the sign at its new location using the components from the existing sign or whether the intent was to build a new sign with new components at the new location.

Subsequent to receiving the application to move the subject sign, I reviewed the request for compliance with applicable Village ordinances. I determined that the proposal was in violation of one or more sections of the Zoning Ordinance regulating signs. I used the following sections of the Zoning Ordinance to justify my determination:

- *Section 50-1220 defines an "Off Premise Sign" as "a sign which advertises goods, products, facilities or services not necessarily on the premises where the sign is located, or directs persons to a different location from where the sign is located."*
- *Section 50-1220 defines a "Nonconforming Sign" as "a sign which does not comply with the regulations set forth in this article."*
- *Section 50-1259 requires that "All off-premises billboard signs are prohibited in the village."*
- *Section 50-1296 sets forth regulations for nonconforming signs and requires that "All nonconforming signs existing on the effective date of the ordinance from which this article is*

derived are permitted, provided such signs complied with all applicable ordinances and regulations at the time of initial erection or subsequent alteration, and such signs were covered by sign permits, if required. Such nonconforming signs shall be permitted as long as the following conditions are met:

- (1) The sign is not structurally modified or altered, except where such work results in, or has the effect of, bringing such sign more in compliance with the provisions of this article. For the purposes of this article, normal maintenance or changing of copy shall not be considered a modification or alteration.*
- (2) The sign is not relocated or replaced.*

The thought process used to come to the above conclusion to deny the applicant's permit application began with my conclusion that the subject sign is indeed an off-premise sign because, throughout its years of existence, the sign has advertised goods, products, facilities or services not necessarily on the premises where the sign is located, or has directed persons to a different location from where the sign is located. Also, the State permit for the sign issued in 1984 categorizes the sign as an "Off-Advertised Property sign. Since off-premise signs are prohibited in the Village and have been since March, 1989, the subject sign is a nonconforming sign. Finally, the rules for nonconforming signs set forth in Section 50-1296 prohibit any such sign from being relocated or replaced. I based my determination to deny the applicant's permit on the above findings.

I notified the applicant by phone of the denial of the permit within a week of the application date and explained how I came to the above conclusions. Subsequent to this phone conversation, the applicant requested that I formalize the denial in writing, including the grounds for denial. I responded to this request via e-mail on March 18, 2010 (see attachment VII).

On April 16, 2010 the applicant appealed my determination to deny the permit to move the subject sign. The appeal was filed within "30 days of the order, requirement, ruling or decision in question" required by Section 50-206 of the Zoning Ordinance. Section 50-208 requires that "The village board of appeals shall thereafter render its decision within 60 days from the date of filing of the appeal." Resultantly, a public hearing was scheduled to hear the appeal on 6/1/10. Upon mutual agreement by both parties, however, the public hearing was postponed to a later date to allow time for the parties to discuss possible options and alternatives. As of the date of writing of this report, the parties have not discussed a proposal that is acceptable to both parties.

NOTES

- (1) This rehearing of the 9/28/2011 Board of Appeals ruling was by ordered Circuit Judge William J. Atkinson on July 1, 2011.
- (2) The billboard sign in question no longer exists and has been acquired by the DOT. Next Media has been compensated for the acquisition by the DOT.

ATTACHMENTS

- I-II** Petition for appeal
- III** Aerial view of subject property
- IV** Application for sign permit
- V** Site plan showing existing and proposed sign location
- VI** DOT permit for sign issued on 2/16/84
- VII** E-mail explaining reason for permit denial
- VIII-X** Correspondence from appellant's attorney dated 3/26/10

ATTACHMENT I



2456 Glendale Ave
Green Bay, WI 54313

APPLICATION FOR
A ~~ZONING VARIANCE~~ / APPEAL

See Next Page
for Materials to be Submitted
with This Application

Application Fees: \$250 &
\$500 for Construction w/out
Permit

Date: April 16, 2010
Initials: RMS

Applicant

Name: Renee M. St. Laurent / Next Media Outdoor, Inc.

Address: 1800 Scheuring Road, Suite C, DePere, WI 54115

Phone: 920-347-1767 Email: rstlaurent@nextmediagroup.net

Business Name: Next Media Outdoor, Inc.

Conditional Use Site Address: 2059 Shawano Avenue

Landowner of Record: Department of Transportation

Address: PO Box 28080 Green Bay, WI 54324

Phone: 800-233-5022 Email: _____

Consultant(s)

Architect Electrician

Name: Michael R. Eland / Eland Electric

Address: 3154 Holmgren Way, Green Bay, WI 54304

Phone: 920-338-6000 Email: _____

Contractor/Engineer

Name: Stephen J. Cegelski / Next Media Outdoor, Inc.

Address: 1800 Scheuring Road, Suite C DePere, WI 54115

Phone: 920-347-2222 Email: _____

Parcel/Building Information

Lot Size: 3.86 Acres Current Zoning: I1 Street Frontage: 476 ft

Lot Dimensions: 476' x 338' x 357' x 490' Does Current Zoning Permit Intended Use: _____

Bldg. Sq. Footage: _____ Dimensions of Building: _____

Describe Specifically the Nature of the Request: Pursuant to Section 50-206 of the Code of Ordinances of the Village of Howard, Next Media Outdoor is seeking an appeal of the decision of James Korotev, the Village's Director of Code Administration, to deny NextMedia's applications to relocate its existing off-premise signs located at 2059 Shawano Ave. and 300 South Taylor Street. NextMedia sought to relocate these signs due to the Wisconsin DOT's highway expansion plans. NextMedia believes that the DOT allowance for the relocation of existing signs preempts the Village's prohibition on the relocation of non-conforming signs. NextMedia also believes that the Village's prohibition on off-premise signs is an unconstitutional infringement upon its First Amendment Rights. It is NextMedia's position that the DOT expansion project has created an unnecessary hardship that is not self imposed that should be corrected by the Board and that the Village's refusal to allow the signs to be relocated would be unjust.

ATTACHMENT II

Please Note the Following:

- Incomplete applications will not be accepted and/or processed
- All applications shall be submitted three (3) weeks prior to the Board of Appeals meeting at which the applicant wishes to appear
- Processing an application may take up to sixty (60) days due to legal notices mandated by State law
- The Board of Appeals meets on the fourth Tuesday of the month when a variance is requested

Standards to be Met When Granting a Variance

Unnecessary Hardship

The applicant must show that the difficulty or hardship faced has been created by the zoning ordinance and is not self-imposed and that, in the absence of a variance, no feasible use of the property can be made. The hardship must be unique to the parcel in question and not one which affects all parcels in the area similarly. Potential loss of profit for financial gain is not, in and of itself, grounds for a variance.

Unique Property Limitation

The applicant must show that unique physical characteristics of the property itself prevent him from building or developing in compliance with the Village's Zoning Ordinances. These characteristics may include topographical conditions, parcel shape, physical surroundings, wetland areas or soil types which limit reasonable use of the property.

Protection of Public Interest

The applicant must show that the granting of a variance will not harm the public interest, including the interests of the public at large, not just those of nearby property owners. The granting of a variance must not result in an inadequate supply of light or air to adjacent property, a substantial increase in congestion of public streets, an increase in the danger of fire, endangerment of the public safety, or reduction or impairment of property values within the neighborhood. The lack of local opposition to a variance petition does not in itself mean that the variance will not harm the public interest.

REQUIRED (Provide All That Apply)

- ✓ A plat of survey or the equivalent thereof depicting the location, dimensions, boundaries, setbacks of buildings/structures and uses and size of the site.
- ✓ A site plan depicting existing and proposed structures relative to lot lines

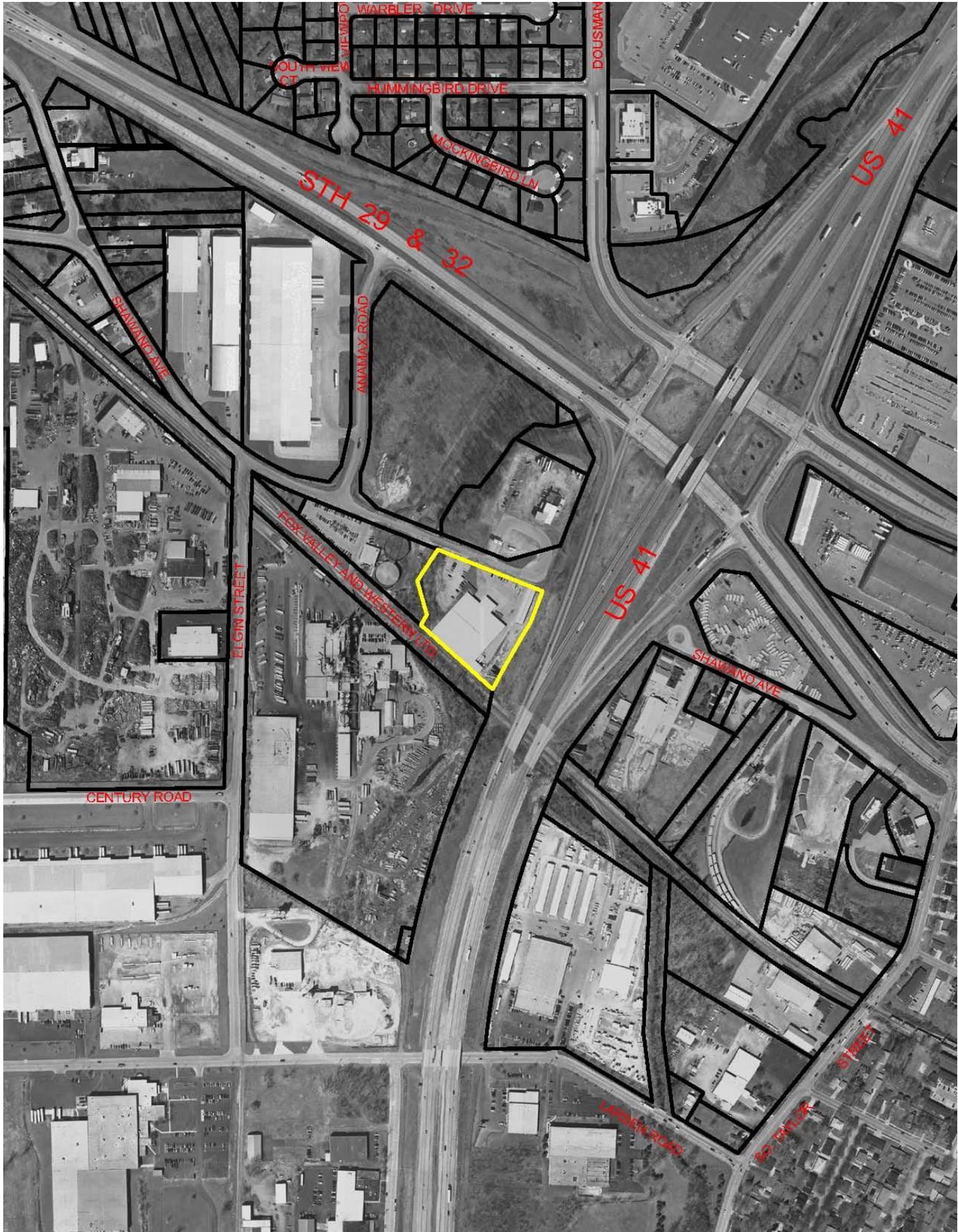
Submit 15 copies of all color documents. Submit 3 copies of all documents not printed in color.


Applicant Signature

4-16-10
Date

Please direct all questions to Jim Korotev. Jim may be reached at 920-434-4640 or by email at jkorotev@villageofhoward.com

ATTACHMENT III



ATTACHMENT IV

DEPARTMENT OF CODE ADMINISTRATION
 2456 Glendale Avenue, Green Bay, WI 54313
 (Office) 920-434-4640 (FAX) 920-434-4643
 (Email) jkorotev@villageofhoward.com



PERMIT APPLICATION

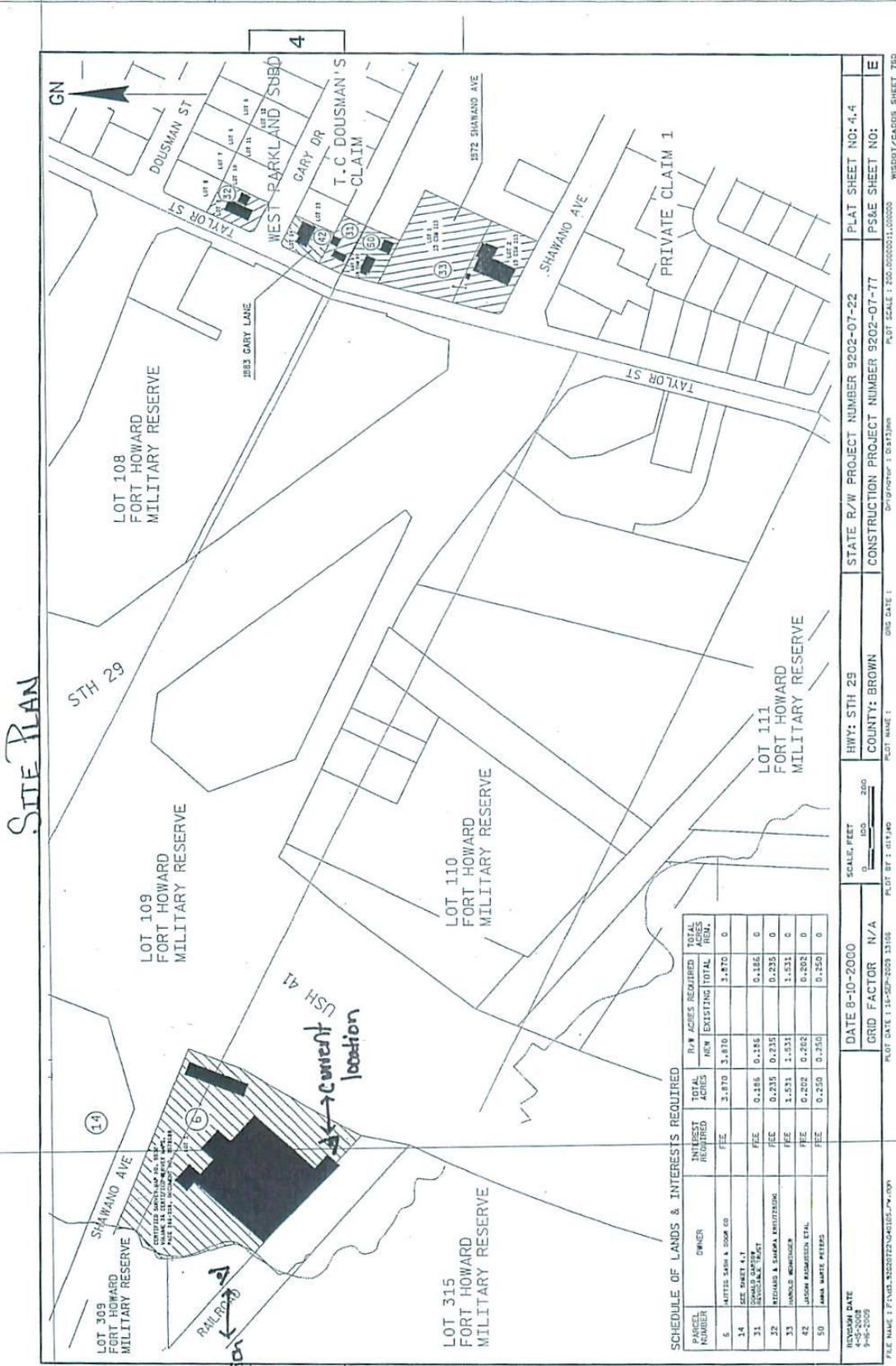
PLEASE COMPLETE ALL APPLICABLE SECTIONS

INCOMPLETE APPLICATIONS CANNOT BE ACCEPTED

LOCATION	JOB SITE ADDRESS (Street Number and Name) 2059 Shawano Avenue	LOT # VH-623-A	SUBDIVISION Fort Howard Military Reserve			
PROPERTY OWNER	PROPERTY OWNER'S FULL NAME Wisconsin Department of Transportation		DAYTIME PHONE # 1-800-233-5022			
	PROPERTY OWNER'S MAILING ADDRESS (Include Zip Code) P.O. Box 28080, Green Bay, WI 54324-0080					
PERMIT APPLICANT	PERMIT APPLICANT'S COMPANY NAME NextMedia Outdoor, Inc	PERMIT APPLICANT'S FULL NAME (First, Middle Initial, Last) Renee M. St. Laurent	DAYTIME PHONE # 920-347-1765			
	PERMIT APPLICANT'S MAILING ADDRESS (Include Zip Code) 1800 Scheuring Rd, Suite C, P.O.Box 5846, De Pere, WI 54115	FAX # 920-339-4612	ALTERNATE OR CELL PHONE # 800-339-5744 x225			
BUILDING CONTRACTOR	BUILDING CONTRACTOR'S COMPANY NAME N/A	BUILDING CONTRACTOR'S FULL NAME (First, Middle Initial, Last)	DAYTIME PHONE #			
	BUILDING CONTRACTOR'S MAILING ADDRESS (Include Zip Code)	WI DWELLING CONTRACTOR QUALIFIER #	WI DWELLING CONTRACTOR #			
ELECTRICAL CONTRACTOR	ELECTRICAL CONTRACTOR'S COMPANY NAME Eland Electric	ELECTRICAL CONTRACTOR'S FULL NAME (First, Middle Initial, Last) Michael R. Eland	WI ELECTRICAL CREDENTIAL # 1095791			
	ELECTRICAL CONTRACTOR'S MAILING ADDRESS (Include Zip Code) 3154 Holmgren Way, Green Bay, WI 54304		DAYTIME PHONE # 920-338-6000			
PLUMBING CONTRACTOR	PLUMBING CONTRACTOR'S COMPANY NAME N/A	PLUMBING CONTRACTOR'S FULL NAME (First, Middle Initial, Last)	WI PLUMBING CREDENTIAL #			
	PLUMBING CONTRACTOR'S MAILING ADDRESS (Include Zip Code)		DAYTIME PHONE #			
HVAC CONTRACTOR	HVAC CONTRACTOR'S COMPANY NAME N/A	HVAC CONTRACTOR'S FULL NAME (First, Middle Initial, Last)	WI HVAC CREDENTIAL #			
	HVAC CONTRACTOR'S MAILING ADDRESS (Include Zip Code)		DAYTIME PHONE #			
SEWER CONTRACTOR	SEWER CONTRACTOR'S COMPANY NAME N/A	SEWER CONTRACTOR'S FULL NAME (First, Middle Initial, Last)	WI PLUMBING CREDENTIAL #			
	SEWER CONTRACTOR'S MAILING ADDRESS (Include Zip Code)		DAYTIME PHONE #			
OTHER CONTRACTOR	OTHER CONTRACTOR'S COMPANY NAME NextMedia Outdoor, Inc.	OTHER CONTRACTOR'S FULL NAME (First, Middle Initial, Last) Stephen J. Cegelski	WI CREDENTIAL # 194			
	OTHER CONTRACTOR'S MAILING ADDRESS (Include Zip Code) 1800 Scheuring Rd., Suite C, P.O.Box 5846, De Pere, WI 54115		DAYTIME PHONE # 920-347-2222			
PROJECT (CHECK ONE)	<input type="checkbox"/> NEW BUILDING <input type="checkbox"/> ADDITION <input type="checkbox"/> ALTERATION/REMODELING <input type="checkbox"/> REPAIR <input type="checkbox"/> MOVING <input type="checkbox"/> DEMOLITION <input checked="" type="checkbox"/> OTHER Move off-premises sign					
BLDG TYPE (CHECK ONE)	<input type="checkbox"/> SINGLE FAMILY <input type="checkbox"/> DUPLEX <input type="checkbox"/> MULTI-FAMILY <input type="checkbox"/> COMMERCIAL/INDUSTRIAL <input type="checkbox"/> GARAGE/STORAGE <input type="checkbox"/> AGRICULTURAL <input checked="" type="checkbox"/> OTHER Move off-premises sign					
WORK TYPE (CHECK ALL PROPOSED WORK)	<input type="checkbox"/> BUILDING CONSTRUCTION <input type="checkbox"/> ELECTRICAL <input type="checkbox"/> PLUMBING <input type="checkbox"/> HEATING/VENTILATING/AIR CONDITIONING <input checked="" type="checkbox"/> OTHER Move off-premises sign					
EST COST (LABOR AND MATERIALS)	BUILDING CONSTRUCTION (\$) \$0	ELECTRICAL (\$) \$1,500	PLUMBING (\$) \$0	HVAC (\$) \$0	OTHER (\$) \$11,400	TOTAL ESTIMATED COST (\$) \$12,900
JOB DESCRIPTION (DESCRIBE ALL PROPOSED WORK)	Move off-premises sign structure due to state hwy expansion. <i>Device per 50-1259 50-1296</i>					
BUILDING FEATURES (COMPLETE THIS SECTION FOR NEW BUILDINGS AND ADDITIONS ONLY)	CONSTRUCTION TYPE (Site Constructed or Manufactured) N/A	BASEMENT? (Yes or No) N/A	# OF STORIES (Above Basement) N/A	FOUNDATION TYPE (Poured Concrete, Masonry Block, Treated Wood, Etc.) Poured Concrete		
	ELECTRICAL SERVICE SIZE (Amperes) 200 Amperes	ELECTRICAL SERVICE LOCATION (Overhead or Underground) Underground		BUILDING USE (Permanent or Seasonal) N/A		
	HVAC EQUIPMENT (Forced Air, Radiant, Heat Pump, Boiler, Etc.) N/A	HVAC FUEL (Natural Gas, LP Gas, Fuel Oil, Electricity, Solid Fuel, Solar, Etc.) N/A		WATER HEATING FUEL (Natural Gas, LP Gas, Fuel Oil, Electricity, Etc.) N/A		
	CENTRAL AIR CONDITIONING? (Yes or No) N/A	SEWER TYPE (Municipal or Private) N/A		WATER SUPPLY (Municipal Utility or Private Well) N/A		
SIGNATURE	RMS ENTER YOUR INITIALS IN THIS BOX TO VERIFY THAT YOU HAVE READ AND AGREE TO THE TERMS AND CONDITIONS DETAILED BELOW (REQUIRED FOR APPLICATION TO BE PROCESSED)	APPLICATION DATE 3-12-10	CONSTRUCTION START DATE 4-23-10			

BY INITIATING THE BOX ABOVE, THE PERMIT APPLICANT DOES HEREBY CERTIFY THAT: (1) ALL INFORMATION PROVIDED ON THIS APPLICATION IS TRUE AND CORRECT. (2) THE PERMIT APPLICANT UNDERSTANDS THAT THE ISSUANCE OF A PERMIT CREATES NO LEGAL LIABILITY, EXPRESSED OR IMPLIED, ON THE VILLAGE OF HOWARD OR ON ANY OF ITS EMPLOYEES. (3) IN THE PERFORMANCE OF ALL WORK COVERED, THE PERMIT APPLICANT WILL BE BOUND BY AND SUBMIT TO ALL STATUTES OF THE STATE OF WISCONSIN, CONFORM TO ALL APPLICABLE CODES AND ORDINANCES OF THE VILLAGE OF HOWARD, AND ABIDE BY ALL RULES AND REGULATIONS PRESCRIBED BY THE DEPARTMENT OF CODE ADMINISTRATION.

ATTACHMENT V



SCHEDULE OF LANDS & INTERESTS REQUIRED

PARCEL NUMBER	OWNER	INTEREST REQUIRED		TOTAL ACRES REQUIRED		TOTAL ACRES		TOTAL ACRES REM.
		NEW	EXISTING	NEW	EXISTING	NEW	EXISTING	
6	MUTTIG SAH & DOOR CO	FEE	0.210	0.210	0.210	0.210	0	0
14	SEE SHEET 4.1	FEE	0.186	0.186	0.186	0.186	0	0
31	REYNOLDS & SARGA	FEE	0.235	0.235	0.235	0.235	0	0
32	REYNOLDS & SARGA	FEE	1.531	1.531	1.531	1.531	0	0
33	REYNOLDS & SARGA	FEE	0.202	0.202	0.202	0.202	0	0
42	JACKSON ROBERTSON ET AL	FEE	0.250	0.250	0.250	0.250	0	0
50	ANNA MARIE PETERS	FEE	0.250	0.250	0.250	0.250	0	0

REGIONAL DATE: 8-10-2000
 STATE R/W PROJECT NUMBER: 9202-07-22
 CONSTRUCTION PROJECT NUMBER: 9202-07-77
 PLAT SHEET NO: 4.4
 PS&E SHEET NO: E

SCALE: FEET
 0 100 200
 HWY: STH 29
 COUNTY: BROWN
 PLOT NAME: 1
 PLOT DATE: 1-14-SEP-2008 13:16
 PLOT SCALE: 1:101340
 DRAWN BY: 1.041340
 WISDOT/CADSYS SHEET 783

ATTACHMENT VI

APPLICATION FOR PERMIT TO INSTALL OUTDOOR SIGN (Interstate and Federal Aid Primary Highway Systems)

State of Wisconsin / Department of Transportation

E-M-417 1-81

INSTRUCTIONS TO APPLICANT:

Submit this application to the District Office identified in the block entitled "Mail Completed Permit Application To:". Application shall include the following:

- A. Three copies of this application form with all entries completed down to dotted line.
B. Three copies of a sign sketch illustrating the size (by dimensions), shape, color scheme and message of the proposed display.
C. Three copies of a site plan drawing, detailing sign positioning with respect to the highway, direction(s) of the sign's facing or facings, and whether the display will be on a building or free-standing.
D. One copy of some form of documentation from the jurisdictional zoning authority to prove how the property is zoned, include date current zoning was established.

SIGN LOCATION AND SITE QUALIFICATION DATA

Form containing fields for Interstate or Federal Aid Primary Highway No. (41), County (Brown), Highway Side (West), Township (24), Range (20), and other location details.

SIGN CATEGORY

- On-Advertised Property and on building
On-Advertised Property for guidance internal traffic
Directional as defined by subsec. Trans. 201.05 Adm. Code:
On-Property Free Standing
Off-Advertised Property (advance inform)
More than 660 feet from Highway right of way

SIGN TYPE:

Form containing fields for Name and address of applicant (Orde Advertising Co.), Telephone (498-8410), and Street Address (300 S. Taylor St. - P.O. Box 548).

The undersigned applicant hereby requests permission to install and/or maintain signing as described herein. A CHECK in the amount of \$ 100.00 is enclosed herewith as payment of the permit issuance fee.

Jan. 20, 1984 Date, X Buyer Beethel Signature of Permit Applicant

PERMIT

Subject to compliance by the applicant with all requirements of Section 84.30, Wis. Statutes, with Chapt. Trans. 201, Wis. Administrative Code, with other statutes and codes applying, and with all standard and special provisions on the reverse face hereof or attached hereto, permit approval is hereby granted to authorize installation and maintenance of the specific advertising or informative display described herein at the precise location herein defined.

Access from the travel lane or any interchange ramp of any Interstate highway or any other controlled access highway for the installation, maintenance or repair of the sign is expressly prohibited.

Table with 5 columns: Dist. Ref. No., Sign Area (Sq. Ft.), Fee Received, Permit Issuance Date, Permit Number. Values include 1344, \$100.00, 2-16-84, 5-0373-84.

APPROVAL

X Donald H. Jorgensen Chief Maintenance Engineer

THIS PERMIT IS REVOCABLE

3. 3144

ATTACHMENT VII**Jim Korotev**

From: Jim Korotev
Sent: Thursday, March 18, 2010 3:15 PM
To: 'rstlaurent@nextmediagroup.net'
Subject: Billboard Sign Relocation at 2059 Shawano Avenue

Renee:

Please be advised that your permit application to move the billboard sign presently located on parcel VH- 623-A (2059 Shawano Avenue) to parcel VH-674 (2099 Shawano Avenue) has been denied.

Explanation: Billboard signs have been prohibited in the Village of Howard since March, 1989. Any billboard sign existing on or before March, 1989 is allowed to remain in its present location and is classified as an existing permitted nonconforming sign. However, the Village Zoning Ordinance establishes regulations and limitations on nonconforming signs. Specifically, Section 50-1296(2) of the ordinance requires that nonconforming are permitted as long as *"the sign is not relocated or replaced."* Since the application you submitted involves the proposed relocation of a billboard sign, the application has been denied.

Sincerely,

James Korotev
Director of Code Administration
Department of Community Development
Village of Howard, Wisconsin

Office: 920-434-4640
Facsimile: 920-434-4643
Web: www.villageofhoward.com

This message may contain confidential information that is legally privileged and is intended only for the use of the parties to whom it is addressed. If you are not an intended recipient, you are hereby notified that any disclosure, copying, distribution or use of any information in this message is strictly prohibited. If you have received this message in error please notify me at 920-434-4640 or by reply e-mail. Thank you.

ATTACHMENT VIII

MAR-26-2010 12:24
Mar 26 10 02:12p

VILLAGE OF HOWARD

920 434 4643
7704440271

P.001/003
p. 1

WEBB, KLAUSE & LEMON, L.L.C.

ATTORNEYS AT LAW

1900 THE EXCHANGE, S.E. • SUITE 480 • ATLANTA, GEORGIA 30339

(770) 444-9325 • (770) 444-0271 (facsimile)

FAX TRANSMITTAL COVER SHEET

THIS FAX MESSAGE IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHICH IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL AND EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone and return the original message to us at the above address via the U.S. Postal Service. Thank you.

TOTAL NUMBER OF PAGES 3, INCLUDING THIS COVER PAGE**

TO: Mr. James Korotev
COMPANY: Village of Howard, Wisconsin
FROM: E. Adam Webb **DIRECT DIAL:** (770) 444-0773
DATE: March 26, 2010
RE: NextMedia Group Sign Applications
MESSAGE: Please see attached correspondence.

** If you do not receive all of the pages, please call (770) 444-9325 as soon as possible.

Fax Number: 920-434-4643
Verbal Confirmation Required? Yes No
Confirmation Telephone Number:

~~ATTACHMENT IX~~
Mar 26 10 02:12p

VILLAGE OF HOWARD

920 434 4643

P.002/003

7704440271

p. 2

WEBB, KLASE & LEMON, L.L.C.

ATTORNEYS AT LAW

1900 THE EXCHANGE, S.E. • SUITE 480 • ATLANTA, GEORGIA 30339

(770) 444-9325 • (770) 444-0271 (facsimile)

Author's Direct Dial:
(770) 444-0773

Email Address:
Adam@WebbLLC.com

March 26, 2010

VIA FACSIMILE AND U.S. MAIL

Mr. James Korotev
Director of Code Administration
Department of Community Development
Village of Howard, Wisconsin
2456 Glendale Avenue
Green Bay, Wisconsin 54313

Re: NextMedia Group Sign Applications

Dear Mr. Korotev:

I write to you on behalf of my client NextMedia Group, Inc. in response to your email correspondence dated March 18, 2010 and March 23, 2010. By way of introduction, I am an attorney who specializes in sign law and represents numerous outdoor advertising companies throughout the country. After receiving your emails, my clients forwarded this matter to me for review. Having completed my initial investigation, I wanted to bring certain issues to your attention in hopes of resolving this situation.

As you know, my client recently submitted applications to the Village to relocate its existing signs at 300 South Taylor Street and 2059 Shawano Avenue. Both of these applications sought to move the signs due to the Wisconsin DOT's highway expansion program. Pursuant to Wisconsin Transportation Regulation 201.10(2)(c) these signs are eligible to be relocated. Additionally, my client has been authorized by the Department of Transportation to relocate these signs and has been awarded a relocation allowance. Despite obtaining permission from the State of Wisconsin to relocate these existing signs, your emails dated March 18th and 23rd purport to deny my client the ability to relocate these signs.

Respectfully, the Village of Howard's decision to deny NextMedia the ability to relocate the signs at 300 South Taylor Street and 2059 Shawano Avenue is contrary to the State's allowance of relocation for nonconforming signs and is therefore invalid. E.g., Anchor Sav. & Loan Ass'n v. Equal Opportunities Com'n, 355 N.W.2d 234, 238 (Wis. 1984) (municipalities may not pass ordinances which infringe the spirit of state law or are repugnant to general policy of state); Welter v. City of Milwaukee, 571 N.W.2d 459, 463 (Wis. Ct. App. 1997) (holding that

ATTACHMENT X

MAR 26 2010 12:24

VILLAGE OF HOWARD

920 434 4643

P.003/003

Mar 26 10 02:12p

7704440271

p. 3

Mr. James Korotev
March 26, 2010
Page 2 of 2

municipal ordinances are preempted by state statute if the ordinance defeats the purpose of state legislation, or violates spirit of state legislation). Indeed in Lamar OCI South Corp. v. Stanly County Board of Zoning Adjustment, 650 S.E.2d 37, 41-43 (N.C. Ct. App. 2007), the court found that a local ordinance's prohibition on relocation of nonconforming signs was preempted by state law and was therefore invalid. The Village's attempt to do the same thing here is invalid.

Furthermore, Wisconsin law makes it clear that municipalities like the Village of Howard are liable to pay the full costs of removing any signs that have achieved nonconforming status. See Wisconsin Transportation Regulation 201.20(6) (requiring local government pay the full costs of removing any signs that acquire nonconforming status under state law). Therefore, should the Village insist upon preventing the relocation of the signs in question, NextMedia will have no option but to take the Village to court to recover the full monetary value of the signs in question. Based on numerous transactions involving comparable signs, my client informs me that the total value of these signs is over \$315,000.

Your denial of my client's applications suffers from these and other legal deficiencies. However, I would like to emphasize that it is certainly not my client's wish to enter into litigation with the Village. Rather, it is my hope that by bringing this issue to the forefront now the Village will have an opportunity to revisit its decision. I will call you on Monday to discuss the status of my client's applications further. If you would rather I speak with the Village Attorney, I am glad to do so. I look forward to speaking with you.

Sincerely,



E. Adam Webb

EAW/jl

cc: Mr. Don Snyder