

Signs of the Times

Wilf Sommerkorn

John Janson

And a “thanks” to Tony Kohler from Heber City
and Kate Kopischke, Scenic Utah



APA 2021 Fall Conference

- **Session Goals**



- Overview of recent case law
- Sign types
- Typical sign ordinance outline
- Implications of content neutral principle on Electronic Message Centers – Pole Signs, Low Profile Signs, and Billboards

Reed v. Town of Gilbert (2015)



- If you have to read the sign to figure out what kind of sign it is, that is a problem. Differentiating sign types based on content can't be done any more
- Just time, place and manner
- Example: “real estate” signs – can you differentiate from a “yard sale” sign?

Significant Recent Sign Cases

- Reed v Town of Gilbert (2015)
 - Restrictions cannot be content-based
- Thomas v Bright (Schroer) (2019)
 - Basis for distinguishing between on- and off-premise not allowed under Gilbert
 - “Concurrence not binding precedence”
- Reagan Nat’l Advertising v City of Austin (2020)
 - Fifth Circuit relied on Sixth Circuit analysis in Thomas case
 - Granted cert by U.S. Supreme Court in June 2021

Sign Types

- Pole signs
 - Monument/low profile signs
 - On the buildings
 - Wall, awning, projecting
 - Temporary signs
 - Do we still have billboards?
-
- Sign issues – lighting, size, setbacks, height



Pole Signs

- Size usually based on frontage, or a just a max
- Light them or unlit? (dark sky issue)
- Electronic messaging?
- Pole covers
- Landscaped area?
- Setbacks
- Height



Monument /Low Profile Signs

- Size usually based on frontage, or a just a max
- Light them or unlit? (dark sky issue)
- Electronic messaging?
- Landscaped area
- Setbacks
- Height



Wall, Awning, Projecting Signs

- Wall - Size usually based on front façade of a building or just a max
 - Light them or unlit? (dark sky issue)
 - Electronic messaging?
- Awning – about the same standards but usually not lit or back lit – clearance issues
- Projecting – allowable distance from the building, clearance, mostly not lit

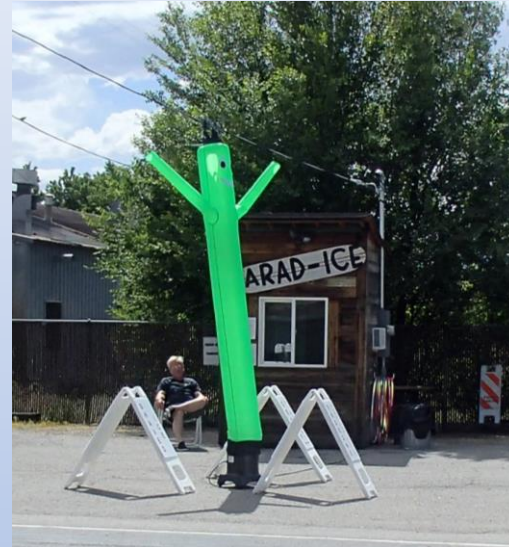


Temporary signs

- All kinds
- Difficult enforcement
- Ever changing!
- Usual standards address how long they can be out, condition, where allowed (in the ROW???)



Other Types and Enforcement issues



Typical Sign Ordinance outline

- Purpose (character issue)
 - How processed (Admin/Enforcement)
 - Handling Non-Conforming signs
 - Types/regulations (use pics!)
 - Definitions (here or in the Defs chapter?)
 - Severability – maybe here but better up front in the Code
- Considerations
 - Balance of Biz needs versus community character
 - Less is more – do you really want to try and enforce my kids' lemonade sign?
 - Content Neutral
 - Engage your business community

The “distinction”

- How does the content neutral principle effect billboards?



- Do you have to read the sign to know it is a billboard?
- Just being off the premises – is that a clear distinction?
- Is a billboard just a different kind of pole sign?

What if there is no clear distinction?

- Treat all pole signs alike
- Could any electronic message center have an off the premises advertisement? **YES!**
- We can't control what is advertised there
- New revenue source for those that have the electronic signs
- Does this stop further billboard construction?
- Why would a property owner allow an off the premises sign to be erected if they are only allowed one pole sign?
- What happens to the NC existing Billboards?

Nonconforming Billboards

- **Their “extra” rights**
 - If located near a power line
 - Can move an NC billboard – at will
 - Buying out (eminent domain) very difficult
 - Can upgrade an existing NC billboard (and raise to 45’) on a local street
- **Tried these items recently**
 - Cities and Counties not be allowed to prevent their upgrade to digital signs
 - Can’t do trading – you demolish one billboard to allow an electronic one
 - *None of these have been passed yet!*

Questions and Thank You!

- Wilf Sommerkorn
- John Janson

