



## Office of the City Attorney

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PARALEGAL  
Ryan M. Riley

January 19, 2024

Members of the Urban Design Commission  
c/o Jessica Vaughn, Secretary via email

RE: Adams Outdoor Advertising Appeal of Building Inspection Official Notice  
Digital Image Advertising Sign at 75 Nob Hill Road

Dear UDC:

This letter is the Zoning Administrator's response to Adams Outdoor Advertising's appeal.

The City of Madison does not allow digital signs – those with LED displays, whether static or with animation/video. The ordinance is MGO 31.045(3)(i). Digital signs are classified as an unsafe or unlawful sign type and "Hazardous or Prohibited Signs, Structures and Conditions."

31.045(3)(i) Digital Image Signs. Digital Image Signs, as defined in Sec. 31.03(2), whether static or animated, are prohibited.

Digital Image Sign (Static). A sign, any portion of which displays static or stationary illuminated digital images, produced by technology such as LED (light emitting diode) or LCD (liquid crystal display) display screens, plasma, high-definition, interactive touch-screen, or other such technology.

Adams has a double-sided digital billboard at 75 Nob Hill Road, that was in the Town of Madison until the City attached the Town on October 31, 2022. This billboard displays digital, static images that change periodically. (Exhibits 2,3,4, and Adams brief.) This sign had a permit from the Town, but not the County, and it never complied with County ordinance.

The Zoning Administrator (ZA) sent Adams a letter in April of 2023 informing them the City does not allow digital signs and requesting their compliance. (Exh 1) The ZA sent a similar letter to all other former Town of Madison property owners with digital signs. In September of 2023, staff inspected Adams' sign and issued an Official Notice since it was still operating as a digital sign, in violation of MGO 31.045(3)(i).

The City has an ordinance for situations where a sign was legal under a prior version of the ordinance, but becomes “nonconforming” due to an ordinance amendment. While that’s not the situation here, that ordinance is instructive. Sec. 31.05 says digital signs must comply, and cannot continue (Exh 7.)

### **The UDC should uphold the Official Notice**

The UDC must decide whether to uphold the Official Notice issued by the Zoning Inspector. In answering this, the UDC needs to make findings of fact – is this a digital sign? Was it operating as digital on the date of the notice? Does this violate a City ordinance? Does the Notice comply with the law? Is there any error in the Official Notice?

All of those questions can be answered in the City’s favor and the Official Notice should be upheld.

In this Official Notice, the City is not asking Adams to remove the billboard, or reduce its size - just to stop using the digital features in violation of 31.045(3)(i).

### **Response to Adams’ Arguments**

1. Chapter 31 is not a zoning ordinance.

Adams argues that an illegal digital sign that was in the Town but now in the City should be granted “legal nonconforming use” status, under concepts of zoning law. But the City does not regulate signs through its zoning power. The sign ordinance is not a zoning ordinance – Chapter 28 is the City’s zoning ordinance. The UDC should find that Chapter 31 is not a zoning ordinance, and the concept of nonconforming land use does not apply to Adams’ digital sign. The reasons are laid out later in this letter.

2. Chapter 31 requires “nonconforming” signs to follow the City’s rules for digital signs.

Sec. 31.05(1)(a)1. establishes the City’s policy to require “nonconforming” signs to follow the City’s rules for digital signs, and digital image signs are prohibited.

3. The sign was not completely legal when it was in the Town.

Even if Chapter 31 is treated as a zoning ordinance, it turns out this billboard was not entirely legal when it was in the Town, because it never had a permit from Dane County and violated Dane County’s zoning ordinances. So it would not be considered a legal nonconforming use.

4. This is not a regulatory taking.

Adams also argues that it would be a “taking” of their property to enforce the digital ban. That is not correct, but the UDC doesn’t have to decide this question because it’s a question of

constitutional law that is inappropriate for an administrative body like the UDC.

The rest of this letter lays out detailed arguments to support the City's position.

**1. Chapter 31 is not a zoning ordinance.**

The legal concept of a "valid non-conforming use" only applies to zoning ordinances, and Chapter 31 is not a zoning ordinance. The digital sign features the City seeks to enforce are not a "use" of land. The City's ordinance prohibiting digital image signs is not "zoning."

**Key Points:**

- [Chapter 31, the Sign Control Ordinance](#), is a non-zoning police power ordinance, and not an exercise of zoning authority, it was not adopted under Wis. Stat. 62.23(7).
- Chapter 31's purpose is to promote traffic safety and aesthetics throughout the City as a whole and to help identify businesses and properties. See Exhibit 7.
- Chapter 28 is the City's zoning ordinance and it does not regulate billboards or signs.
- Chapter 31 does not divide the city into districts based on land use – Chapter 28 does. Chapter 31 borrows the zoning districts, for convenience only. Some, but not all, of the sign regulations in Chapter 31 apply to Groups of zoning districts. But the digital ban applies citywide regardless of zoning district or use.
- Chapter 31 does not meet the Wisconsin Supreme Court's standards for a zoning ordinance under the [Zwiefelhofer](#) case.
- Signs are not a "land use." Billboards (Advertising Signs) in general, and digital sign technology, are not treated as "uses" of land. They are not mentioned as uses in [Chapter 28, the City's zoning ordinance](#).
- This billboard was not fully "legal" when it was in the Town because it did not have a permit from Dane County and the Dane County zoning ordinance did not permit digital signs. Therefore, it could not be granted legal nonconforming use status anyhow.

The Sign Control Ordinance is a non-zoning police power ordinance that regulates signs on private property in the City. It's organized primarily by sign type – not by zones or districts. Chapter 31 also creates a licensing system for sign erectors and is where the UDC gets its authority to conduct Comprehensive Design Review of signs. Chapter 31 has existed as an independent sign ordinance since at least 1977.

**Chapter 31 does not meet the Zwiefelhofer standards for a zoning ordinance.**

The Wisconsin Supreme Court provides guidance to identify a zoning ordinance. In [Zwiefelhofer v. Town of Cooks Valley](#), 2012 WI 7, 338 Wis. 2d 488, 809 N.W.2d 362 (2012), the court found a town mining ordinance was not a zoning ordinance, and laid out some characteristics of a zoning ordinance. Chapter 31 does not meet those characteristics:

- Does the ordinance divide a geographic area into multiple zones or districts – for the purposes of assigning compatible land uses?
  - A. No. Chapter 31 borrows the zoning districts to create groups for convenience, to establish criteria for some of the common sign types.
- within the established districts or zones, are certain uses typically allowed as of right and certain uses prohibited by virtue of not being included in the list of permissive uses for a district?
  - A. No. chapter 31 does not describe uses at all.
- zoning ordinances are traditionally aimed at directly controlling *where* a use takes place, as opposed to *how* it takes place. A distinction between a zoning ordinance and other regulations is whether the ordinance is addressed to location or activity.
  - A. While some signs are not allowed in certain “Groups,” that is not the focus of the Chapter. It creates precise regulations for how a sign is constructed and displayed, and height, area, setback and other rules - many of which apply City wide.
- zoning ordinances traditionally classify **uses** in general terms and attempt to comprehensively address **all possible uses** in the geographic area.
  - A. This is not how chapter 31 is organized – it’s organized by sign type.
- zoning ordinances make a fixed, forward-looking determination about what **uses** will be permitted, as opposed to case-by-case, ad hoc determinations of what individual landowners will be allowed to do.
  - A. The sign ordinance has a complicated set of rules for different types of permitted signs, but also allows case by case determinations - through the UDC’s Comprehensive Design Review.
  - B. Chapter 31 also allows many types of exempt signs (no permit required) citywide.
- traditional zoning ordinances allow certain landowners whose **land use** was legal **prior to the adoption of the zoning ordinance** to maintain their land use despite its failure to conform to the zoning ordinance.
  - A. See the discussion about 31.05 below – this does not involve land use, this is not a zoning ordinance and Adams’ sign was not legal prior to the adoption of Chapter 31.

Zwiefelhofer v. Town of Cooks Valley, 2012 WI 7, ¶ 35-42, 338 Wis. 2d 488, 506, 809 N.W.2d 362, 370–372.

The unpublished case Adams submitted is not a good comparison to this situation, it involved mobile home parks. But that case highlights an important zoning concept that is not present in chapter 31 - traditional zoning ordinances use geographical districts to separate incompatible land uses - and this is NOT what chapter 31 does, at all. Town of Bradford v Merriam, 2012 WI App 97 at ¶24.

## **Chapter 28 is the Zoning Ordinance.**

Chapter 28 is called Zoning Code Ordinance. It was adopted under the authority of Wis. Stat. sec. 62.23(7). It establishes zoning districts in sec. 28.021, and zoning district maps in sec. 28.022. Dividing a city into zones or districts and creating maps for such purposes are hallmarks of a zoning ordinance. See enclosed excerpts from Chapter 28 – Exhibit 8.

Chapter 28 defines nonconforming use like this:

Nonconforming Use. Any **principal use of land or buildings** which does not comply with all the regulations of **this ordinance** [chapter 28] or of any amendment **hereto** [amendment of ch. 28] governing use for the zoning district in which such use is located.

Use. The use of property is the **purpose or activity for which the land or building thereon is occupied or maintained.**

A sign, including a billboard, is not a “use” of land or buildings. The word “use” is a term of art used in zoning. Browse the lists of permitted or conditional uses in [Chapter 28](#) and you will not see signs or billboards listed as a “use.”

75 Nob Hill is zoned SE and the permitted zoning uses are listed in [28.082, Table 28F-1](#). The property where Adams sign is located has buildings, parking lot and driveway and does not exist solely for the purpose of having a billboard. It has been used as a auto-repair shop.

Chapter 31 doesn’t regulate land use at all. It creates a permit process and unique and specific rules for different types of signs, exempts other types of signs from permit, and allows case-by-case determinations by the UDC.

## **2. What does Chapter 31 say about nonconforming *digital* signs?**

MGO 31.05 uses the word “nonconforming” to allow signs that complied with the sign code when erected but become noncompliant on the effective date of Chapter 31 or *due to a change in the code*. But that is not the situation here. Rather, the situation is that this sign was not in the City, and now it is.

**The important part is that Sec. 31.05(1)(a)1. requires nonconforming signs to cease digital operations:**

“Existing signs with features fitting the description of any sign prohibited by Sec. 31.045(3)(f), (g), (h), or (i) shall be required to conform to the requirements of those subsections.”

Let’s say 31.05 applies to signs from the Town of Madison that come into the City. And let’s

assume 31.05(1) can be applied to an Advertising Sign.<sup>1</sup>

The City made a policy choice that it will not “grandfather” digital features that violate 31.045(3)(i) or other electronic regulations in ch. 31. Rather, pre-existing signs must comply with the City’s digital rules. This is because those digital features are capable of being adjusted to comply. Under MGO 31.05(1), signs with digital image features prohibited by 31.045(3)(i) must conform.

In this Official Notice, the City is not asking Adams to remove the billboard, or reduce its size - just to stop using the digital features in violation of 31.045(3)(i). In the spirit of the policy choice reflected in 31.05(1)(a), only the digital features must be made to comply.

### **3. The Nob Hill digital billboard was not truly legal in the Town.**

The next question is whether the Nob Hill digital sign was legal and conformed to applicable zoning and other ordinances when it was in the Town of Madison. That’s a big question, because the Town permit doesn’t say it’s for a digital sign, and Adams never had a permit from Dane County for this billboard. Dane County had concurrent jurisdiction with the Town over sign regulation at the time the sign was constructed. A permit would have been needed from both the Town *and* Dane County, in 2006.

#### **A. Town Permit.**

It’s not clear that the Town permit was for a *digital* billboard. Nothing on the Town permit says it’s for a digital / electronic sign. The Town ordinance allowed electronic changing billboards at that time, but there is no evidence in the record that Town knew this billboard was going to be electronic. Also, the Town ordinance was not a zoning ordinance, so the Town permit did not establish the digital billboard as a lawful zoning “use.”

More importantly – a Town permit was not enough. Adams also needed Dane County’s permission for this billboard. This is established in a 2012 Court of Appeals ruling after Adams sued the County: Adams Outdoor Advertising, L.P. v. County of Dane, 2012 WI APP 28. (Exh 9)

#### **B. Dane County: Adams never had a permit from Dane County and the sign violated County zoning ordinance in 3 ways. See Exhibit 5 – Roger Lane Email.**

Adams should have got a permit from Dane County, because the County was responsible for zoning in the Town of Madison. Dane County’s jurisdiction over billboards in the Town of Madison was upheld in a published Court of Appeals case, Adams Outdoor Advertising, L.P. v.

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<sup>1</sup> It appears sec. 31.05(1) does not apply to existing Advertising Signs. Pre-existing Advertising Signs are addressed in 31.05(2), and that section only allows Advertising Signs that were in existence in 1983 to remain in the City. According to the Town Permit, this billboard was constructed in 2006. So – maybe 31.05 doesn’t apply at all to this particular sign. If not, the whole sign has to go.

County of Dane, 2012 WI APP 28. (Exh 9.)

Although Adams had a permit from the Town (and possibly the state) the sign violated County zoning when it was erected in 2006, for three reasons: (1) no permit, (2) too big, (3) it was digital. (See Exh 6, Roger Lane letter.) To solve their problem, Adams sued the County, twice. The second lawsuit involved this very sign. The County settled both cases with Adams, and that is why Adams was allowed to keep this digital sign. The *County* agreed, via settlement, to treat it as legally nonconforming (Exh 10 – Dane County settlement).

But that does not mean the City has to treat it as legally nonconforming. That was Dane County's choice as a result of a lawsuit settlement.

An important rule for nonconforming status is that *the use must have legally conformed at the time it began*. See Wis. Stat. 62.23(7). This sign was constructed in 2006. In 2006, it violated Dane County ordinance chapter 10 in 3 ways. See the Roger Lane letter (Exh 6) and email (Exh 5) and the Court of Appeals decision (Exh 9) which lays out the County ordinances in question.

#### **4. Enforcing the Digital Ban is Not a Regulatory Taking**

To qualify as a regulatory taking, a regulation or government action “must deny the landowner all or substantially all practical uses of a property in order to be considered a taking for which compensation is required.” Zealy v. City of Waukesha, 201 Wis.2d at 374, 548 N.W.2d 528, cited in Eberle v. Dane Cnty. Bd. of Adjustment, 227 Wis. 2d 609, 622, 595 N.W.2d 730, 737 (1999).

We don't know if Adams' lease with the property owner requires them to operate a *digital* sign or even mentions whether the billboard is digital. One can imagine a double-sided “regular” billboard aimed at busy Beltline traffic would generate plenty of revenue and remain valuable to Adams and their landlord. Compliance with Sec. 31.045(3)(i) does not result in this land having no value for Adams or the property owner. This is not a regulatory taking.

Even if it were, the claim is not ripe and the UDC is not the time or place to decide this question. “A regulatory taking claim does not become ripe .... ‘until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue’” and “until just compensation has been denied.” Eberle v. Dane Cnty. Bd. of Adjustment, 227 Wis. 2d 609, 638, 595 N.W.2d 730, 744–45 (1999).

#### **CONCLUSION**

In an administrative appeal, the UDC must make findings of fact to support its decision, and apply the law correctly. This letter provides a roadmap to do so. The Zoning Administrator and Building Inspection Director respectfully ask the UDC to uphold the Official Notice in this appeal for all of the reasons stated in this letter. The UDC should find that Chapter 31 is not a zoning

January 19, 2024

Page 8

ordinance. Signs, including billboards are not regulated as a zoning use by the City of Madison, and digital sign technology is also not a zoning use. Therefore, this digital billboard is not entitled to nonconforming use status. Even if zoning concepts apply, this billboard was not legal when it was constructed in 2006 and the City is not obligated to honor Dane County's settlement agreement now that the sign is no longer in the County's jurisdiction. This billboard currently violates MGO 31.045(3)(i). The Official Notice ordering Adams to discontinue the digital technology features on this sign should be upheld so that the City can continue its enforcement efforts.

Sincerely,



Lara Mainella  
Assistant City Attorney  
City of Madison

CC: Robert Procter, attorney for Adams  
Katie Bannon, Zoning Administrator

Enclosures: Zoning Administrator Exhibits

1. 4-28-23 Letter to Adams from ZA Katie Bannon
2. Building Inspection Official Notice - 9-11-23
3. Photo of sign at 75 Nob Hill Road
4. Inspection Notes for 75 Nob Hill Road
5. Dane County 2-3-2012 enforcement letter to Jason Saari
6. Roger Lane 1-17-24 email
7. Madison General Ordinances Chapter 31 – Sign Control Ordinance Excerpts
8. Madison General Ordinances Chapter 28 – Zoning Ordinance Excerpts
9. Court of Appeals Decision dated February 2, 2012 in Appeal No. 2010AP178, Adams Outdoor Advertising, L.P. and Town of Madison v. County of Dane
10. Settlement Agreement in *Adams Outdoor Advertising, L.P. and Town of Madison v. County of Dane*, Appeal No. 2010AP00178 dated April 24, 2012.

## **Zoning Administrator Exhibits**

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8. Madison General Ordinances Chapter 28 – Zoning Ordinance Excerpts
9. Court of Appeals Decision dated February 2, 2012 in Appeal No. 2010AP178, Adams Outdoor Advertising, L.P. and Town of Madison v. County of Dane
10. Settlement Agreement in *Adams Outdoor Advertising, L.P. and Town of Madison v. County of Dane*, Appeal No. 2010AP00178 dated April 24, 2012.



Department of Planning & Community & Economic Development

## Building Inspection Division

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Madison Municipal Building, Suite 017  
215 Martin Luther King Jr. Blvd.  
P.O. Box 2984  
Madison, Wisconsin 53701-2984  
Phone: (608) 266-4551  
[www.cityofmadison.com](http://www.cityofmadison.com)

April 28, 2023

Adams Outdoor Advertising, Inc.  
Attn: Julie Johnson  
102 E. Badger Rd.  
Madison, WI 53713

**Subject: 79 W. Beltline Highway/75 Nob Hill Rd. Advertising Sign**

Dear Adams Outdoor Advertising,

Your advertising sign is located on a property that became part of the City of Madison on October 31, 2022. This means the City's rules for signs now apply.

Your sign is a Static Digital Image Sign, defined as:

Digital Image Sign (Static). A sign, any portion of which displays static or stationary illuminated digital images, produced by technology such as LED (light emitting diode) or LCD (liquid crystal display) display screens, plasma, high-definition, interactive touch-screen, or other such technology.

Digital Image Signs are prohibited in the City of Madison, by sec. 31.045(3)(i) of the Madison General Ordinances. Only non-digital advertising signs are allowed to continue.

The City will be following up to determine compliance after June 1, 2023. Please contact me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Katie Bannon".

Katie Bannon  
Zoning Administrator  
[kbannon@cityofmadison.com](mailto:kbannon@cityofmadison.com)  
608-266-4569



## **BUILDING INSPECTION OFFICIAL NOTICE**

**CASE NUMBER:** CB2023-271-04923

**PROPERTY:** 75 NOB HILL RD

**INSPECTION DATE:** 09/11/2023  
12:00 PM

**INSPECTOR:** JACOB MOSKOWITZ  
ASSISTANT ZONING ADMINISTRATOR  
(608) 266-4560  
[jmoskowitz@cityofmadison.com](mailto:jmoskowitz@cityofmadison.com)

**MAILED DATE:** 09/29/2023

7787 WESTBELT LLC  
PO BOX 155  
OREGON, WI 53575

This notice does not start any legal action. The Building Inspection Division is willing to answer questions pertaining to this Official Notice in order to assist you in correcting the violations. If you have questions or concerns, it is important to contact the inspector as soon as possible. You are responsible for contacting the assigned inspector before the due date to arrange for any reinspections requiring access to the interior of the property.

If the violations are not corrected by the due dates listed below, the Building Inspection Division may issue a citation or refer the case to the City Attorney's Office for prosecution. The Madison General Ordinances allow for a fee of \$75.00 to be charged for any inspections that do not result in full compliance, including inspections that result in an extended due date. To avoid penalties or fees you are encouraged to correct the violations as soon as possible in advance of the due date and then notify the assigned inspector to verify the corrections made. Compliance shall be on a continual basis. Continued or repeated violations may result in the issuance of citations without further warning or written notice.

Any items on this notice that are not corrected by the originally required compliance date may be subject to rent abatement claims. Items that could be subject to abatement in the inspector's opinion have been marked "Y" in the abatable column. Actual abatement and eligibility, if applied for, will be determined by the Hearing Examiner.

All applications for appeal of orders shall be submitted to the Building Inspection Director in writing within fifteen (15) days of the postmark on the Official Notice. Appeal information may be obtained by calling (608)266-4551.

Item No.	Violation Section No.	Abate	Corrections Required	Due Date
1.	31.045(3)(i)	No	Discontinue the display of any Digital Image Sign features on the Advertising Sign located at 75 Nob Hill Rd.  Digital Image Signs, as defined in Sec. 31.03(2), static or animated, are both prohibited. Static Digital Image Signs are defined as: A sign, any portion of which displays static or stationary illuminated digital images, produced by technology such as LED (light emitting diode) or LCD (liquid crystal display) display screens, plasma, high-definition, interactive touch-screen, or other such technology.  Animated Digital Image Signs are defined as: A Digital Image Sign as defined above, any portion of which is capable of producing an animated or moving digital or video image.	10/31/2023
CC:	LUCAS HEIAR PO BOX 155 OREGON WI 53575		ADAMS OUTDOOR ADVERTISING 3801 CAPITAL CITY BLVD LANSING MI 48906	





## CODE ENFORCEMENT: SUMMARY

PROPERTY: 75 NOB HILL RD  
MADISON, WI 53713  
0709-361-0406-0

CASE NO: CB2023-271-04923  
CASE INFO: Referred

CASE TYPE: SIGN  
REPORTED ISSUE: DIGITAL ADVERTISING SIGN

LANDMARK: NO  
ZONING: SE  
ADDRESS DESC: 6411 AUTOMOBILE AND  
TRUCK REPAIR SERVICES.

### CONTACT(S) INFORMATION

INSPECTOR	JACOB MOSKOWITZ	215 MARTIN LUTHER KING JR BLVD MADISON WI 53701-2984	(608) 266-4551
OWNER	7787 WESTBELT LLC	PO BOX 155 OREGON, WI 53575	
CC2	ADAMS OUTDOOR ADVERTISING	3801 CAPITAL CITY BLVD LANSING MI 48906	
REGISTERED AGENT	LUCAS HEIAR	PO BOX 155 OREGON WI 53575	

### INSPECTION HISTORY

EMP	INSPECTION	DATE/TIME	MINUTES	RESULT	RESULT COMMENT
JEM	Initial Inspection	09/11/23 12:00 PM	0	Official Notice	Digital video billboard
JEM	Reinspection		0	Scheduled	

Item No.	Inspection Type	Date Inspected	Inspection Result	Assigned Due Date	Date of Compliance
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Ordinance violation: 31.045(3)(i)

Corrective action: Discontinue the display of any Digital Image Sign features on the Advertising Sign located at 75 Nob Hill Rd.

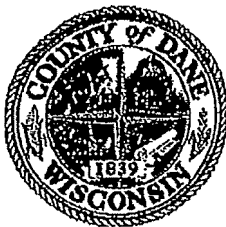
1

Digital Image Signs, as defined in Sec. 31.03(2), static or animated, are both prohibited.

Static Digital Image Signs are defined as: A sign, any portion of which displays static or stationary illuminated digital images, produced by technology such as LED (light emitting diode) or LCD (liquid crystal display) display screens, plasma, high-definition, interactive touch-screen, or other such technology.

Animated Digital Image Signs are defined as: A Digital Image Sign as defined above, any portion of which is capable of producing an animated or moving digital or video image.

Initial Inspection	09/11/2023	VIOLATION	10/31/2023
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## DANE COUNTY PLANNING DEVELOPMENT

Room 116, City-County Building, Madison, Wisconsin 53703  
Fax (608) 267-1540

*Housing &  
Economic Development*  
(608)266-4270, Rm. 362

*Planning*  
(608)266-4251, Rm. 116

*Records & Support*  
(608)266-4251, Rm. 116

*Zoning*  
(608)266-4266, Rm. 116

February 3, 2012

Jason Saari  
Adams Outdoor Advertising  
102 E. Badger Road  
Madison, WI 53713

RE: Construction of an off-premise advertising sign without obtaining a Dane County Zoning Permit at 75 West Beltline Highway, Town of Madison

Dear Mr. Saari,

This letter is to inform you that the Dane County Zoning Division has identified that an off-premise advertising sign was constructed on Parcel 0709-361-9070-0 within the Town of Madison. Upon investigation, it was observed that a 14' x 48' electronic LED off-premise advertising sign was constructed on the property fronting West Beltline Highway.

Under Dane County Code of Ordinances (DCCO), Chapter 10, Zoning Regulations, section 10.91, a zoning permit is required to be obtained prior to the construction of a sign to ensure compliance with zoning regulations. The purpose of this regulation is to ensure public safety, preservation of scenic beauty, and the implementation of the desired overall character of the community and constituent zoning districts. Failure to obtain a permit for the construction of a sign is a violation of DCCO 10.91.

Based on a preliminary review, it appears that the sign constructed on the property has copy area of 1,344 square feet. DCCO section 10.74 (6) states the maximum copy area for an off-premise advertising sign (billboard) shall be no larger than 300 square feet. It appears that the constructed sign far exceeds the 300-square foot limit for off-premise advertising signs. The constructed sign as observed violates DCCO section 10.74 (6).

Further, the sign is of a type whose message is changed by electronic means (LED sign). This would be considered an electronic sign. Under DCCO section 10.73(15), electronic signs may only be used to advertise goods and services available on the property on which the sign is located. It was observed that the sign displays other advertisements other than A-1 Transmission. The constructed sign as observed violates DCCO section 10.73 (15).



Exhibit 5

This letter serves as notice that the construction of the billboard sign located on the property located on the property at 75 West Beltline Highway in the Town of Madison, as identified as Parcel # 0709-361-9070-0, is in violation of the Dane County Code of Ordinances, Zoning Regulation, sections 10.91, 10.74(6) and 10.73(15). You are hereby instructed to remove the sign within 30 days of the date of this letter or be subject to penalties as noted in DCCO 10.92. If the sign is not removed within the specified timeframe, compliance shall be sought through circuit court action.

Your cooperation is appreciated in this matter.

Respectfully,



Roger W. Lane III  
Dane County Zoning Administrator

Cc Carlos Pabellon, Dane County Corporation Counsel  
Director Todd Violante, Dane County Planning & Development  
Hans Hilbert, Dane County Regional Zoning Inspector  
Town Clerk Renee Schwass  
Michael Duffy, 75 West Beltline Highway, Madison, WI, 53713, property owner

Enclosures

**From:** [Lane, Roger](#)  
**To:** [Bannon, Katherine J](#)  
**Cc:** [Johnson, Sarah](#); [Hilbert, Hans](#)  
**Subject:** RE: Billboard in Former Town of Middleton - 75 Beltline Hwy  
**Date:** Wednesday, January 17, 2024 12:07:27 PM

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Caution: This email was sent from an external source. Avoid unknown links and attachments.

Dear Katie,

The answer to your question is no. The billboard did not receive a zoning permit. There was a lawsuit in 2009 regarding this billboard and the billboard on the other side of the beltline at 404 W Badger Road.

There was a settlement agreement that allowed the sign to stay. Dane County Corporation Counsel Dave Gault gave the settlement agreement to with Lara Mainella in the City Attorney's Office.

Let me know if you need additional information.

Regards,

Roger Lane  
Dane County Zoning Administrator  
266-9078

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**From:** Johnson, Sarah <Johnson.sarah@countyofdane.com>  
**Sent:** Wednesday, January 17, 2024 9:24 AM  
**To:** Hilbert, Hans <hilbert.hans@countyofdane.com>; 'Bannon, Katherine J' <KBannon@cityofmadison.com>; Lane, Roger <lane.roger@countyofdane.com>  
**Subject:** RE: Billboard in Former Town of Middleton - 75 Beltline Hwy

Hello Katie,

I believe that there may have been a number of lawsuits involving billboards before my time working for the department. I am copying in Zoning Administrator Roger Lane, as he may be able to provide you with more information.

I was able to find the attached violation notice on record for the billboard sign on this property. The violation notice instructs them to remove the unpermitted sign.

I was not able to find record of the results of a lawsuit. Perhaps Dane County Corporation Counsel would need to be contacted for that information. I defer to Roger as to whether or not he knows of where additional records might be found. Or maybe it is enough for you to know that this sign was installed in violation of the Dane County Zoning Ordinance. I don't know how much detailed information you are looking for or how deep you want to dig. If you would like information on any lawsuit that was filed, Corporation Counsel may need to be contacted, unless Roger knows of any

other records that we would have regarding the violation. I was not able to find anything beyond this attached violation notice.

To my knowledge, I do not believe that the Dane County Zoning Ordinance has ever allowed billboards to exceed 300 square feet, or to have electronic messages.

Thank you.

Sarah Johnson  
Zoning Inspector  
608-267-3960 office, 608-219-8019 cell  
[johnson.sarah@countyofdane.com](mailto:johnson.sarah@countyofdane.com)

Mailing address:  
[Dane County Planning and Development](#)  
210 Martin Luther King Jr Blvd, Room 116  
Madison WI 53703

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**From:** Hilbert, Hans <[hilbert.hans@countyofdane.com](mailto:hilbert.hans@countyofdane.com)>  
**Sent:** Wednesday, January 17, 2024 9:01 AM  
**To:** 'Bannon, Katherine J' <[KBannon@cityofmadison.com](mailto:KBannon@cityofmadison.com)>  
**Cc:** Johnson, Sarah <[Johnson.sarah@countyofdane.com](mailto:Johnson.sarah@countyofdane.com)>  
**Subject:** RE: Billboard in Former Town of Middleton - 75 Beltline Hwy

Katie,

I'm not finding any permits that would match a new or replacement billboard in 2006 on that property. I'm copying Sarah Johnson, our sign expert, who is more familiar with our sign permits than I am, so she might be able to find something.

Hans

**From:** Bannon, Katherine J <[KBannon@cityofmadison.com](mailto:KBannon@cityofmadison.com)>  
**Sent:** Wednesday, January 17, 2024 08:52  
**To:** Hilbert, Hans <[hilbert.hans@countyofdane.com](mailto:hilbert.hans@countyofdane.com)>  
**Subject:** RE: Billboard in Former Town of Middleton - 75 Beltline Hwy

Actually, I may have some follow up questions depending on what you find. So you have availability for a meeting this week? I can do Zoom or in-person, whatever works best for you.

Thanks,  
Katie

**Katie Bannon, AICP** *(she, her)*

Zoning Administrator  
Building Inspection Division  
215 Martin Luther King Jr. Blvd., Suite 017  
P.O. Box 2984  
Madison, WI 53701  
Telephone: 608-266-4569  
Email: [kbannon@cityofmadison.com](mailto:kbannon@cityofmadison.com)  
[www.cityofmadison.com/bi](http://www.cityofmadison.com/bi)

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**From:** Bannon, Katherine J  
**Sent:** Wednesday, January 17, 2024 8:30 AM  
**To:** Hilbert, Hans <[hilbert.hans@countyofdane.com](mailto:hilbert.hans@countyofdane.com)>  
**Subject:** Billboard in Former Town of Middleton - 75 Beltline Hwy

Hi Hans,

Thanks again for all your help with the Town of Middleton zoning files. We have been working through the sign file related to the billboard sign in the former Town at 75 Beltline Hwy (now 75 Nob Hill), and I have a couple questions:

- Did the billboard ever receive a Dane County sign or zoning permit?
- Did the billboard meet the Dane County zoning ordinance in place before the sign was installed or when the sign was installed (2006)?

Thanks!  
Katie

**Katie Bannon, AICP** *(she, her)*

Zoning Administrator  
Building Inspection Division  
215 Martin Luther King Jr. Blvd., Suite 017  
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[www.cityofmadison.com/bi](http://www.cityofmadison.com/bi)

Sent Securely via TLS from County of Dane by  
**Proofpoint**

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### 31.02 PURPOSE AND SCOPE.

- (1) Purpose and Intent. The Common Council, by enacting this ordinance, recognizes the City has a significant and substantial governmental interest in promoting public safety and aesthetic values through the regulation of signs displayed within the City of Madison. The purpose of this ordinance is to create the legal framework for a comprehensive but balanced system of signs, and thereby to facilitate an easy and pleasant communication between people and their environment. Sign regulations, including but not limited to those which control the type, design, size, location and maintenance of signs, are hereby established to further the goals of safety and aesthetics and achieve more specifically, the following purposes:
  - (a) To enable the public to locate goods, services and facilities without difficulty or confusion;
  - (b) To protect property values, public investment and overall neighborhood character by promoting an attractive, harmonious and aesthetically-pleasing environment and preventing conditions which have undesirable impacts on surrounding properties;
  - (c) To promote the development of attractive and harmonious residential areas, viable commercial areas and to identify industrial and other areas;
  - (d) To protect the public and promote safety, including but not limited to traffic and pedestrian safety; and to minimize effects of signs which may distract or obstruct visibility of official traffic signals and other safety or informational devices; and
  - (e) To protect scenic views and the visual environment along all city streets, highways and rights-of-way and to promote overall aesthetics, avoid clutter and avoid inappropriate scale;
  - (f) To recognize the role of appropriate and identifiable signage in helping businesses inform, direct and communicate with customers; and (Cr. by ORD-15-00118, 10-28-15)
  - (g) Recognition that signage is not intended to serve as a principal or sole use of a zoning lot. (Renum. by ORD-15-00118, 10-28-15)
- (2) Scope. This ordinance shall apply to all signs in the City of Madison. However, this ordinance shall not be construed to amend or conflict with any other ordinances or applicable law governing official traffic signs or signals.

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### 31.05 NONCONFORMING SIGNS.

As an exercise of its police powers and authority to regulate for the health, safety and welfare of the public, the City recognizes only the following limited and enumerated circumstances under which a sign that does not meet to the requirements of this chapter may continue to be displayed:

- (1) (a) General Rule . Any existing sign (except an Advertising Sign) that complied with the requirements of this Chapter at the time of erection and becomes noncompliant with the requirements of this Chapter on the effective date of this Ordinance or subsequent amendment may continue to be displayed, and copy may be changed, under the following circumstances:
    1. There is no increase in gross area, net area, illumination, increase or addition of flashing, movement, or other features or characteristics prohibited by Sec. 31.045 and no addition of features that would violate Sec. 31.046(1) (Electronic Changeable Copy Signs). Existing signs with features fitting the description of any sign prohibited by Sec. 31.045(3)(f), (g), (h), or (i) shall be required to conform to the requirements of those subsections. Existing signs with features fitting the description of Electronic Changeable Copy Signs shall be required to conform to all requirements of Sec. 31.046(1) including but not limited to the applicable time limitations for changing copy or images.
    2. (Rep. by ORD-15-00118, 10-28-15)
  - (b) (Rep. by ORD-15-00118, 10-28-15)
  - (c) If an existing nonconforming sign is removed (or substantially removed), ordered to be removed under the authority elsewhere in this chapter, destroyed, or otherwise ceases to exist, the sign is no longer subject to the general rule allowing continued display or changes of copy under Sec. 31.05(1)(a) above. This provision does not apply to signs that are realigned under sub. (2)(c) herein.
  - (d) Existing nonconforming non-residential uses in residential zoned districts are subject to the sign requirements for Group 2 districts.
- (2) Nonconforming Advertising Signs .
- (a) Any existing advertising sign, and its supporting structure if other than a wall sign, located on any zoning lot with frontage on State Street, on the Inner or Outer Ring or on streets connecting the Inner Ring and Outer Ring, shall be removed by the owner thereof at no cost to the City no later than December 31, 1983. For purposes of this subsection, the term "Inner Ring" shall mean the connecting pattern of streets abutting the Capitol Square, to wit: Main Street, Pinckney Street, Mifflin Street and Carroll Street. The term "Outer Ring" shall mean the connecting pattern of streets one block off the Capitol Square, to wit: Doty Street, Webster Street, Dayton Street and Fairchild Street. All other existing advertising signs within the No Advertising Sign District, except for the Howard Johnson directional bulletin located at 525 University Avenue which may only continue as a directional sign, the two roof signs located at 753 East Washington Avenue and the three ground signs located at 640 Williamson Street, shall be removed by the owner at no cost to the City at the rate of no less than one sign per year beginning in calendar year 1983. However, all such signs shall be removed no later than December 31, 1989.
  - (b) Any other advertising sign existing as of November 1, 1983, including those excepted from or otherwise not included in the areas set forth in sub. (a) above, may be continued provided that it may not be relocated, replaced, expanded, enlarged, repositioned or raised in height, except under sub. (2)(c). Such existing advertising signs may not be restored or reconstructed for any reason, except if damaged or destroyed by fire or other casualty or act of God, and only if the

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total cost of restoration to the condition in which it was before the occurrence does not exceed fifty percent (50%) of its assessed value or the cost to replace with a new structure of equal quality, whichever amount is lower. The determination of eligibility for restoration or reconstruction in the preceding sentence shall be made by the Urban Design Commission and any restoration or reconstruction (except realignment under (2)(c) below) without the approval of the Urban Design Commission is prohibited. Violation of this subdivision shall result in the said sign being subject to immediate removal by the owner thereof at no cost to the City. Ordinary repairs or normal maintenance shall be considered "required by law" hereunder.

Construction of a Replacement Advertising Sign with a permit under Sec. 31.112 does not violate the prohibitions in this subsection. A Replacement Advertising Sign under Sec. 31.112 is not an advertising sign as contemplated by this subsection, and therefore not subject to treatment as nonconforming hereunder. (Am. by ORD-15-00069, 6-24-15)

- (c) Realignment of Advertising Signs or Other Nonconforming Signs . Notwithstanding anything to the contrary in this ordinance, an existing advertising sign or other sign meeting the criteria of sub. (1)(a) may be realigned, as that term is defined in Wis. Stat. § 84.30(5r)(a), as created by 2011 Wis. Act 32, on the same site if a highway project of the State of Wisconsin Department of Transportation ("Department") causes the realignment, upon notification of proposed alignment by the Department under Wis. Stat. § 84.30(5r), as created by 2011 Wis. Act 32. For purposes of this section, the "same site" means the same lot of record, as defined in Chapter 28, MGO. Such sign may be realigned only if the City does not choose to petition the Department to acquire the sign under the procedures in that statute. A sign realigned under this provision shall not be subject to applicable setback requirements found elsewhere in this ordinance, if in the Zoning Administrator's opinion a shorter setback is necessary to accomplish the realignment. Any advertising sign realigned under this provision shall comply with Sec. 31.11 unless expressly exempt. Realignment of a sign in compliance with this provision shall not cause the sign to lose any nonconforming status granted by this section. The Zoning Administrator shall keep a record of any sign realigned under this provision.

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### 31.045 UNSAFE AND UNLAWFUL SIGNS AND STRUCTURES.

(1) General Enforcement .

The authority of the Zoning Administrator or designee with respect to unsafe, insecure or unlawful signs, or any sign found to in violation of this ordinance is as described in Secs. 31.04(2) and (4) herein.

(2) Maintenance and Removal of Signs .

- (a) All signs and structures shall be properly maintained and kept in an overall clean, neat state of appearance. It shall be the responsibility of the permit holder or property owner to maintain signs and structures.
- (b) Abandoned Signs . Signs that no longer serve the purpose for which they are intended, or are not maintained, or which have been abandoned, shall be removed by the most recent permit holder, the property owner, or by the City, at the expense of the property owner and may be charged to the property owner as a special charge. The Zoning Administrator shall keep an accurate account of the cost of such removal and bill the property owner. If any account remains unpaid, the Zoning Administrator may report the same to the Finance Director, who shall annually prepare a statement of all special charges at each lot or parcel of land and report the same to the City Clerk, and the amount therein charged against said lot or parcel of land shall be entered in the tax roll as a special charge against said lot or parcel, and the same shall be collected in all respects like any other special charge upon real estate under Wis. Stat. § 66.0627.
- (c) Damaged or defaced signs shall be cleaned, repaired or removed by the most recent permit holder or property owner, or by the City of Madison under Sec. 31.04(4).

(3) Hazardous or Prohibited Signs, Structures and Conditions .

- (a) Bracing of Signs . No sign or structure or any part of such structure as defined in the preceding sections, or any anchor, brace, guy wire or guide rod shall be attached, fastened or anchored to any fire escape, fire ladder or stand pipe, and no such structure or any part of such structure or anchor brace, guy wire or guide rod shall be erected, put up or maintained so as to cover or obstruct any roof, required doorway, required window or other opening of any building so as to prevent or hinder ingress or egress through such required door, doorway, window, exit or other opening, or so as to prevent or hinder the raising or placing of ladders against such building by a Fire Department as necessity may require.
- (b) Signs Not to Constitute a Traffic Hazard . No sign regulated by this ordinance shall be erected at the intersection of any streets in such a manner as to obstruct free and clear vision as further delineated in other sections of this ordinance; or at any location where, by reason of the position, shape or color, it may interfere with, obstruct the view of or be confused with any authorized traffic sign, signal or device; or that makes use of the words "STOP," "LOOK," "DRIVE-IN," "DANGER," or any other word, phrase, symbol, or character in such manner as to interfere with, mislead or confuse traffic.
- (c) Public Right-of-Ways .
  - 1. No sign, advertisement, cabinet or obstruction, or any other object shall be placed upon, over, or in any public highway right-of-way, including the sidewalk, street, alley or public ground, or upon posts, trees or other supports in any public street or public ground, except that this section shall not be construed to prohibit the erection or placing of official traffic control devices, signs, signals or markers or other signs authorized by law or this ordinance, or of any other object specifically authorized by law of the State of Wisconsin or by these

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ordinances. This section shall not prohibit carrying of portable hand-held signs on the sidewalk or other pedestrian ways, when done so in compliance with Sec. 31.046(2)(b).

2. Reserved for Future Use. (Am. by ORD-17-00109, 10-25-17; Rpld. by ORD-19-00081, 11-13-19)
3. This subdivision does not apply to signs on City-sponsored bicycle-sharing facilities set forth in Sec. 10.33, MGO. (Am. by ORD- 17-00109, 10-25-17)

This is a Charter Ordinance adopted pursuant to Wis. Stat. § 66.0101, and Article XI, Sec. 3 of the Wisconsin Constitution, and shall be effective upon sixty (60) days from passage and publication, subject to the referendum procedures of Wis. Stat. § 66.0101(5).

4. This subdivision does not apply to Government Building Identification Signs and Promotional and Decorative Banners under Sec. 31.07(5)(f). (Am. by ORD- 17-00109, 10-25-17)

This is a Charter Ordinance adopted pursuant to Wis. Stat. § 66.0101, and Article XI, Sec. 3 of the Wisconsin Constitution, and shall be effective upon sixty (60) days from passage and publication, subject to the referendum procedures of Wis. Stat. § 66.0101(5).

- (d) Suspended Signs. No sign or other structure as defined in this section shall be fixed to or suspended from any other sign so that the distance from the lower side of the sign or projection will be less than ten (10) feet from the top of a pedestrian walkway.
- (e) Signs Painted Directly Upon Any Wall Or Wall Surface. No sign shall be painted directly upon any wall or wall surface unless approved by the Urban Design Commission as a legacy sign under Sec. 31.043(3) or approved by the Landmarks Commission under Secs. 41.09(4) or 41.12(2). (Am. by ORD-15-00072, 7-29-15)
- (f) Use of Projected Images, in Conjunction With Signs. Any projected images, video, or other electronic light or laser displays projected onto a sign, building or structure are prohibited unless expressly allowed elsewhere in these Ordinances.
- (g) 1. Motion Signs. All Motion signs, as defined in Sec. 31.03(2), are prohibited. Flags and decorative and promotional banners allowed under Sec. 31.075 are not considered "motion signs."
2. Attention-Getting Objects. All Attention-Getting Objects, defined in Sec. 31.03(2), whether or not attached to or displayed in connection with a sign, are prohibited. Flags and decorative and promotional banners allowed under Sec. 31.075 are not considered "Attention-Getting Objects."
- (h) Flashing Signs. All Flashing signs, as defined in Sec. 31.03(2), are prohibited regardless of the frequency of the flashing. Signs displayed in compliance with Sec. 31.046(1) and motion signs displayed in compliance with sub. (g)1. above, shall not be considered in violation of this prohibition. Official traffic control devices are exempt from this prohibition.
- (i) Digital Image Signs. Digital Image Signs, as defined in Sec. 31.03(2), whether static or animated, are prohibited.
- (j) Signs on Bridges and Overpasses. No person shall display, place, erect, post, maintain, install, affix, or carry any sign, including a hand-carried sign, on any portion of a vehicular or pedestrian bridge or overpass that passes over a freeway or expressway as defined in Wis. Stat. § 346.57, or a controlled access highway as defined in Wis. Stat. § 990.01, when such highway has a speed limit of more than 40 miles per hour, whether the highway is under the jurisdiction of the federal, state or local government, provided that such sign is visible from such freeway, expressway or controlled access highway.

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This paragraph shall not apply to "official traffic control devices" as defined in Wis. Stats. § 340.01(38), (2005-06) and as may be amended, which are authorized by law and erected by the authority having jurisdiction over the highway or right of way. Nothing in this subsection shall be construed to limit or restrict the application of Secs. 31.045(3)(b) and (c) of this ordinance, Wis. Stat. ch. 86 and any applicable regulations created by the Department of Transportation pursuant to that chapter, or any other federal, state or local law that prohibits or restricts the placement of signs in highways or other right-of-ways.

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## **28.002 INTENT AND PURPOSE.**

- (1) This ordinance is adopted for the following purposes:
- (a) To promote land uses and development patterns that are consistent with the city's comprehensive plan and of adopted neighborhood, corridor or special area plans.
  - (b) To promote and protect the public health, safety and general welfare of the City.
  - (c) To secure safety from fire, flooding, pollution, contamination and other dangers.
  - (d) To maintain and promote safe pedestrian and vehicular circulation.
  - (e) To minimize congestion in the public rights-of-way through the regulation of off-street parking, maneuvering, loading and signage.
  - (f) To ensure the provision of adequate open space for light, air, fire safety and recreation.
  - (g) To protect environmentally sensitive areas.
  - (h) To address and mitigate the effects of climate change.
  - (i) To remove obstacles and provide incentives for energy conservation and renewable energy.
  - (j) To promote and restore the conservation, protection, restoration and enhancement of historic resources.
  - (k) To facilitate the adequate, efficient and cost-effective provision of infrastructure and other public services and facilities.
  - (l) To preserve the natural scenic beauty of the City and to enhance the aesthetic desirability of the environment as well as the design of buildings.
  - (m) To encourage reinvestment in established urban neighborhoods while protecting their unique characteristics.
  - (n) To stabilize, protect, and enhance property values.
  - (o) To preserve productive agricultural land and provide opportunities for local food production.
  - (p) To encourage innovative project design in the city, including developments that incorporate mixed uses.
  - (q) To encourage the creation, promotion, sale, and enjoyment of art.
  - (r) To create a sense of place.
  - (s) To encourage pedestrian-oriented development.
  - (t) To promote the orderly development and economic vitality of the City.
  - (u) To provide an adequate variety of housing and commercial building types to satisfy the city's social and economic goals.

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### **28.003 RELATIONSHIP TO COMPREHENSIVE PLAN.**

The Madison Comprehensive Plan establishes the goals, objectives and strategies that serve as a basis for this zoning code. All regulations or amendments adopted pursuant to this ordinance shall be generally consistent with the Comprehensive Plan as adopted and revised or updated.

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## **28.004 INTERPRETATION.**

This ordinance applies to all land and land development within the jurisdictional limits of the City of Madison, Wisconsin.

- (1) This ordinance should be interpreted as a permissive zoning ordinance, which means that the ordinance permits only those principal and accessory uses and structures that are specifically enumerated in the ordinance. In the absence of a variance or special exception, any uses or structures not specifically permitted by the ordinance are prohibited. (Cr. by ORD-16-00026, 3-9-16)
- (2) In their interpretation and application, the provisions of this ordinance shall be held to be the minimum requirements for the promotion and protection of the public health, safety, morals and general welfare.
- (3) Where the conditions imposed by any provision of this ordinance are either more restrictive or less restrictive than comparable conditions imposed by any other law, ordinance, statute, resolution or regulation of any kind, the regulations which are more restrictive or which impose higher standards or requirements shall prevail, unless an exception to this provision is specifically noted.
- (4) This ordinance is not intended to abrogate any easement, covenant or other private agreement. However, this ordinance applies if it is more restrictive or imposes higher standards or requirements than an easement, covenant or other private agreement.
- (5) Any use, building, structure, or lot that is lawfully existing at the time of the adoption of this ordinance, or any subsequent amendment(s), may be continued, subject to the provisions in Subchapter 28N, Nonconformities.
- (6) A building, structure or use that was unlawful when this Chapter was adopted does not become lawful solely by reason of the adoption of this Chapter. To the extent that the unlawful building, structure or use conflicts with this Chapter, the building, structure or use remains unlawful under this Chapter.
- (7) In their interpretation and application, the provisions of this ordinance shall be liberally construed in favor of the City and shall not be deemed a limitation or repeal of any other powers granted by the Wisconsin Statutes. Where a provision of this ordinance is required by a standard in Wis. Admin. Code ch. NR 116 or NR 117, and where the ordinance provision is unclear, the provision shall be interpreted in light of the chapter NR 116 or NR 117 standards in effect on the date of the adoption of this ordinance or in effect on the date of the most recent text amendment to this ordinance.

(Sec. 28.004(1) - (6) Renum. by ORD-16-00026, 3-9-16)

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## 28.021 ESTABLISHMENT OF ZONING DISTRICTS.

In order to carry out the purposes and provisions of this ordinance, the following zoning districts are hereby established:

(1) Residential Districts.\*

- (a) SR-C1 Suburban Residential - Consistent District 1
- (b) SR-C2 Suburban Residential - Consistent District 2
- (c) SR-C3 Suburban Residential - Consistent District 3
- (d) SR-V1 Suburban Residential - Varied District 1
- (e) SR-V2 Suburban Residential - Varied District 2
- (f) TR-C1 Traditional Residential - Consistent District 1
- (g) TR-C2 Traditional Residential - Consistent District 2
- (h) TR-C3 Traditional Residential - Consistent District 3
- (i) TR-C4 Traditional Residential - Consistent District 4
- (j) TR-V1 Traditional Residential - Varied District 1
- (k) TR-V2 Traditional Residential - Varied District 2
- (l) TR-U1 Traditional Residential - Urban District 1
- (m) TR-U2 Traditional Residential - Urban District 2
- (n) TR-R Traditional Residential - Rustic District
- (o) TR-P Traditional Residential - Planned District

\* When other Chapters of the Madison General Ordinances refer to residential districts, the Downtown Residential Districts, DR1 and DR2, shall be included.

(Am. by ORD-13-00007, 1-15-13)

(2) Mixed-Use and Commercial Districts.

- (a) LMX Limited Mixed-Use
- (b) NMX Neighborhood Mixed-Use District
- (c) TSS Traditional Shopping Street District
- (d) MXC Mixed-Use Center District
- (e) CC-T Commercial Corridor - Transitional District
- (f) CC Commercial Center District
- (g) RMX Regional Mixed-Use District (Cr. by ORD-21-00008 , 2-10-21)

(3) Employment Districts.

- (a) TE Traditional Employment District
- (b) SE Suburban Employment District
- (c) SEC Suburban Employment Center District

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- (d) EC Employment Campus District
  - (e) IL Industrial - Limited District
  - (f) IG Industrial - General District
  - (4) Downtown and Urban Districts.
    - (a) DC Downtown Core
    - (b) UOR Urban Office Residential
    - (c) UMX Urban Mixed-Use
    - (d) DR1 Downtown Residential 1
    - (e) DR2 Downtown Residential 2
  - (5) Special Districts.
    - (a) A Agricultural District
    - (b) UA Urban Agricultural District
    - (c) CN Conservancy District
    - (d) PR Parks and Recreation
    - (e) AP Airport District
    - (f) CI Campus Institutional District
    - (g) PD Planned Development District
    - (h) PMHP Planned Mobile Home Park District
  - (6) Overlay Districts.
    - (a) WP Wellhead Protection Overlay Districts
    - (b) W Wetland Overlay District
    - (c) TOD Transit Oriented Development Overlay District
    - (d) NC Neighborhood Conservation Overlay Districts
    - (e) F1 Floodway District
    - (f) F2 Flood Fringe District
    - (g) F3 General Floodplain District
    - (h) F4 Flood Storage District

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## 28.022 INCORPORATION OF ZONING DISTRICT MAPS.

The location and boundaries of the zoning districts are hereby established as shown on maps entitled "Zoning District Maps" on file in the office of the Zoning Administrator, including the official Wetland Zoning Maps titled "Wisconsin Wetland Inventory Maps." The zoning district maps, together with all information shown thereon and all amendments thereto, shall be as much a part of this ordinance as if fully set forth and described herein.

(1) Location of District Boundaries .

The following rules shall apply with respect to the boundaries of the zoning districts as shown on the zoning district maps:

- (a) A boundary shown as following, or approximately following, a street, alley or railroad shall be construed as following the centerline of such feature.
- (b) A boundary line shown as following, or approximately following, a lot line, section line, survey or other property line, or municipal boundary shall be construed as following such line or boundary.
- (c) Streets or alleys which are shown on the zoning district maps and which were previously vacated, or which may be vacated in the future, shall be construed to be in the same zoning district as the lots, pieces or parcels abutting both sides of the street or alley involved. If the lots, pieces or parcels abutting each side of the street or alley were located in different zoning districts before the said street or alley was vacated, the center line of such vacated street or alley shall be the boundary line of the respective zoning districts.
- (d) Where any uncertainty exists as to the exact location of zoning district boundary lines, the Zoning Board of Appeals, upon written application, shall determine the location of such boundary lines.

(2) Wetland Maps .

- (a) The Wetland Zoning Overlay District includes all wetlands greater than two (2) acres shown on the Wisconsin Wetland Inventory Maps that have been adopted and made a part of this ordinance.
- (b) Determinations of navigability and ordinary high-water mark shall initially be made by the Zoning Administrator. When questions arise, the Zoning Administrator shall contact the southern district office of the Department of Natural Resources for a final determination of navigability or ordinary high water mark.
- (c) When an apparent discrepancy exists between the Wetland District boundary shown on the official Wetland Zoning Maps and the actual field conditions at the time the maps were adopted, the Zoning Administrator shall contact the southern district office of the Department of Natural Resources to determine if the Wetland District boundary as mapped, is in error. If the Department staff concur with the Zoning Administrator that a particular area was incorrectly mapped as a wetland, the Zoning Administrator shall be responsible for initiating a wetland map amendment within a reasonable period.

(3) Floodplain Maps .

- (a) Incorporation of Floodplain Maps . The location and boundaries of the Floodway, Flood Fringe, and General Floodplain Districts are hereby established as shown on the Flood Insurance Rate Maps prepared by the Federal Insurance Administration of the U. S. Federal Emergency Management Agency, together with other supplemental maps, including the revised Flood Insurance Rate Maps, provided by the Federal Emergency Management Agency, and shown on map panels:

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Effective 01/02/2009 :

55025C0267G, 55025C0379G, 55025C0383G, 55025C0389G, 55025C0390G, 55025C0393G, 55025C0394G, 55025C0401G, 55025C0403G, 55025C0404G, 55025C0407G, 55025C0408G, 55025C0409G, 55025C0413G, 55025C0416G, 55025C0417G, 55025C0418G, 55025C0419G, 55025C0428G, 55025C0433G, 55025C0436G, 55025C0437G, 55025C0438G, 55025C0439G, 55025C0441G, 55025C0442G, 55025C0557G, 55025C0576G

Effective 09/17/2014 :

55025C0242H, 55025C0243H, 55025C0244H, 55025C0261H, 55025C0262H, 55025C0263H, 55025C0264H, 55025C0266H, 55025C0268H, 55025C0269H, 55025C0288H, 55025C0426H, 55025C0427H, 55025C0429H, 55025C0431H, 55025C0432H, 55025C0434H, 55025C0443H, 55025C0444H, 55025C0451H, 55025C0453H, 55025C0461H, 55025C0463H

- (b) The above-mentioned maps with all information shown thereon, together with the accompanying Federal Insurance Administration's Flood Insurance Study for the City of Madison, Wisconsin, Numbers 55025CV001D, 55025CV002D, 55025CV003D, and 55025CV004D, effective June 16, 2016, in which are indicated floodway data and flood profiles, and all amendments thereto to such floodplain maps shall be as much a part of this ordinance as if fully set forth and described herein. (Am. by ORD-16-00062, 6-29-16)
- (c) Maps based on other studies, including Dane County Flood Storage Maps prepared and approved by the Department of Natural Resources, Panel numbers 3, 18, and 20, effective September 17, 2014, and Letter of Map Revision, Case #22-05-1179P effective February 1, 2023, #21-05-2252P effective April 12, 2022, #16-05-6112P dated March 10, 2017, #16-05-3204P dated October 27, 2016, #16-05-1781P dated June 14, 2016, and #12-05-5696P dated March 15, 2013. (Am. by ORD-16-00062, 6-29-16; ORD-17-00007, 1-26-17 Am. by ORD-22-00032 , 5-19-22; Am. by ORD-23-00004 , 1-12-23; Am. by ORD-23-00085 , 10-2-23)
- (d) Any change to the base flood elevations (BFE) or any changes to the boundaries of the floodplain or floodway in the Flood Insurance Study (FIS) or on the Flood Insurance Rate Map (FIRM) must be reviewed and approved by the Department of Natural Resources and the Federal Emergency Management Agency (FEMA) through the Letter of Map Change process before it is effective. No changes to regional elevations (FRE) on non-FEMA maps shall be effective until approved by the Department of Natural Resources. If more than one map or revision is referenced, the most restrictive information shall apply.

(Sec. 28.022(3) Am. by ORD-14-00146, 9-12-14)

(4) Locating Floodplain Boundaries.

Discrepancies between boundaries on the official floodplain zoning map and actual field conditions shall be resolved by the Zoning Administrator using the criteria in subdivisions (a) or (b) below. If a significant difference exists, the map shall be amended using the procedures established for zoning map amendments in Sec. 28.182. The Zoning Administrator can rely on a boundary derived from a profile elevation to grant or deny a land use permit, whether or not a map amendment is required.

The Zoning Administrator is responsible for documenting actual pre-development field conditions and the basis upon which the district boundary was determined and for initiating any map amendments required under this section. Disputes between the Zoning Administrator and an applicant over the location of the district boundary line shall be settled according to the appeals procedure in Sec. 28.205(5) of this ordinance and the criteria in (a) and (b) below. Where the flood profiles are based on established base flood elevations from a FIRM, FEMA must approve any map amendment or revision amended using the procedures established for zoning map amendments in Sec. 28.182.

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- (a) Where flood profiles exist, the map scale and the profile elevations shall determine the district boundary line. Where a discrepancy exists between the map and actual field conditions, the regional or base flood elevations shall govern. The Zoning Administrator has authority to grant or deny a land use permit on the basis of a district boundary derived from the regional flood elevations, whether or not a map amendment is required.
  - (b) Where flood profiles do not exist, the location of the district boundary line shall be determined by the map scale. Where there is a significant difference between the map and actual field conditions, the map shall be amended. Where a map amendment has been approved by the City, the Wisconsin Department of Natural Resources, and the Federal Emergency Management Agency, the Zoning Administrator shall have the authority to grant or deny a land use permit.

(Am. by ORD-14-00146, 9-12-14)

- (5) Incorporation of Flood Storage Maps. The location and boundaries of the Flood Storage Districts are hereby established as shown on Panels 2, 4, and 5 of the Dane County Flood Storage Maps, dated January 2, 2009, and Panel 19 of the Dane County Flood Storage Maps, dated June 16, 2016. (Am. by ORD-16-00062, 6-29-16)

2012 WI APP 28

**COURT OF APPEALS OF WISCONSIN  
PUBLISHED OPINION**

Case No.: 2010AP178

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†Petition for Review filed

Complete Title of Case:

**ADAMS OUTDOOR ADVERTISING, L.P.,**

**PLAINTIFF-RESPONDENT,†**

**TOWN OF MADISON,**

**INVOLUNTARY-PLAINTIFF,**

**V.**

**COUNTY OF DANE,**

**DEFENDANT-APPELLANT.**

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Opinion Filed:	February 2, 2012
Submitted on Briefs:	
Oral Argument:	August 17, 2010

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JUDGES:	Lundsten, P.J., Vergeront and Higginbotham, JJ.
Concurred:	
Dissented:	

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Appellant	
ATTORNEYS:	On behalf of the defendant-appellant, the cause was submitted on the briefs of and oral argument by <i>David R. Gault</i> , assistant corporation counsel, of <i>Dane County Corporation Counsel</i> , Madison.

Respondent	
ATTORNEYS:	On behalf of the plaintiff-respondent, the cause was submitted on the brief of <i>Thomas S. Hornig</i> and <i>Kraig A. Byron</i> of <i>Von Briesen &amp; Roper, S.C.</i> , Madison. There was oral argument by <i>Thomas S. Hornig</i> .

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 2, 2012**

A. John Voelker  
Acting Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2010AP178**

**Cir. Ct. No. 2009CV2299**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS**

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**ADAMS OUTDOOR ADVERTISING, L.P.,**

**PLAINTIFF-RESPONDENT,**

**TOWN OF MADISON,**

**INVOLUNTARY-PLAINTIFF,**

**V.**

**COUNTY OF DANE,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Dane County:  
JOHN W. MARKSON, Judge. *Reversed.*

Before Lundsten, P.J., Vergeront and Higginbotham, JJ.

¶1 HIGGINBOTHAM, J. Dane County appeals a circuit court’s declaratory judgment holding that a town billboard ordinance enacted pursuant to WIS. STAT. § 60.23(29) (2009-10)<sup>1</sup> (the “town billboard statute”) preempts a county’s billboard ordinance enacted under WIS. STAT. § 59.69(1) and (4) (the “general zoning statute”).<sup>2</sup> This dispute stems from Adams Outdoor Advertising, L.P.’s efforts to construct an advertising billboard on a highway located in the Town of Madison. Adams sought permits from the Town and from the Wisconsin Department of Transportation to construct the billboard, but not from Dane County. Adams brought a declaratory judgment action in circuit court to clarify whether Adams was required to obtain a billboard construction permit from the County. The court granted summary judgment in favor of Adams, declaring that, because the Town’s billboard ordinance preempts the County’s billboard ordinance, Adams was not required to obtain a permit from the County before constructing the billboard.

¶2 The County argues on appeal that the circuit court erred by declaring that the Town of Madison’s billboard ordinance, which was enacted pursuant to the town billboard statute, preempts the County’s billboard ordinance, which was enacted under the County’s general zoning authority. We conclude that where, as in this case, a town approves a county zoning ordinance that includes a billboard

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

<sup>2</sup> For ease of reading, where the word “ordinance” is mentioned, it refers to a billboard ordinance. We will also use the following terms or their corresponding statutes when it facilitates ease of reading: WIS. STAT. § 59.69(1) and (4)—the general zoning statute; WIS. STAT. § 59.70(22)—the county billboard statute; and WIS. STAT. § 60.23(29)—the town billboard statute.

ordinance enacted pursuant to the procedures set out in WIS. STAT. § 59.69(5)(c), the town's billboard ordinance adopted under the town billboard statute does not preempt a county's authority to regulate billboards in that town. Therefore, under the facts of this case, we conclude the Town's billboard ordinance does not preempt the County's billboard ordinance. We, therefore, reverse the summary judgment order entered in favor of Adams Outdoor Advertising, L.P. and grant summary judgment in favor of Dane County.

### **PROCEDURAL BACKGROUND**

¶3 Adams Outdoor Advertising, L.P. commenced this action for declaratory relief, seeking an order from the circuit court declaring, among other things, that the County lacked legal authority to regulate advertising signs that fall within the regulatory jurisdiction of the Town under WIS. STAT. § 60.23(29). The County answered and counterclaimed, seeking declaratory and injunctive relief. The parties stipulated to all relevant facts (which are set forth below) and filed cross motions for summary judgment. The issue to be decided on summary judgment, as characterized by the parties, was:

When a town has enacted an ordinance regulating outdoor advertising signs pursuant to WIS. STAT. § 60.23(29), is a permit applicant subject to such a Town ordinance also subject to a County zoning ordinance purporting to regulate the same outdoor advertising sign[.]

To decide the issue, the circuit court had to determine whether the Town's billboard ordinance preempted the County's billboard ordinance.

¶4 The circuit court rendered an oral decision and concluded that the legislature, by enacting WIS. STAT. §§ 59.70(22) and 60.23(29), both of which specifically address regulation of billboards, intended these two statutes to govern

the regulation of billboards. We understand the circuit court to have concluded that when, as here, a town has enacted a billboard ordinance under § 60.23(29), that ordinance preempts a county billboard ordinance enacted under the more general authority conferred in the county zoning statute, WIS. STAT. § 59.69. Applying this construction of these statutes, the circuit court granted declaratory relief in favor of Adams, ruling that the Town's billboard ordinance preempted the County's billboard ordinance. The County appealed.

## FACTS

¶5 The parties stipulated to all relevant facts for purposes of summary judgment and this appeal. From this stipulation, the facts below are relevant for our opinion.

1. [Adams] owns a sign structure on property legally described as: Southeast ¼ of the Northeast ¼ of Section 35, Township 7 North, Range 9 East, lying 2421 feet East of US Highway 14/Park Street. This property is located within the legal boundaries of the Town of Madison, and the Town of Madison maintains the roadways abutting the property upon which the sign is situated.

2. Before construction of the sign structure described in Para. 1, [Adams] applied for permits from the Town of Madison and the Wisconsin Department of Transportation.... [Adams] secured permits from the Town of Madison and the Department of Transportation before commencing construction of the subsection [sic] sign structure.

3. The aforementioned applications which were both signed by Jason Saari, as the Real Estate Manager of [Adams], recite that the sign has two faces that are each 14 feet by 48 feet. Each face having a square footage of 672 feet for a total square footage of the sign of 1,344 square feet....

4. In late 2008/early 2009, [Adams] erected the sign described in Para. 1 having a total dimensional area of 1,344 square feet.

5. The County claims that its authority to regulate the sign at issue emanates from Wis. Stat. § 59.69(4), which defines the power of a county regarding zoning regulation:

(4) EXTENT OF POWER. For the purpose of promoting the public health, safety and general welfare the board may by ordinance effective within the areas within such county outside the limits of incorporated villages and cities establish districts of such number, shape and area, and adopt such regulations for such district as the board considers best suited to carry the purposes of this section.

6. The Dane County Board of Supervisors has enacted an ordinance pursuant to Wis. Stat. § 59.69 for the regulation of zoning within the areas within the county outside the limits of incorporated villages and cities, which is codified as Chapter 10 of the Dane County Code of Ordinances.

7. The subject sign is located on real property located in the Town of Madison, which is in Dane County but outside the limits of incorporated villages and cities.

8. [Adams] erected the subject sign without obtaining a Dane County zoning permit.

9. Jason Saari states in Para. 6 of his Affidavit that “I personally applied for the sign permits for the subject sign structure. When I did so, it was my understanding that the Town of Madison has exclusive jurisdiction over regulation of the subject sign structure at the local level. That remains my understanding.”

10. The Town of Madison Application For Off-Premise Billboard Permit, submitted by the Plaintiff on August 5, 2008 states on Page 2:

Said applicant, its successors or assigns, acknowledges that the installation and maintenance of said Billboard might be subject to Dane County Zoning. The applicant, its successors or assigns assumes all risks if it fails to obtain Dane County Zoning’s approval prior to installing said Billboard.

11. The Wisconsin Department of Transportation Outdoor Sign Installation Application and Permit submitted by the Plaintiff on March 14, 2008 states on Page 2:

The permittee shall comply with all of the following: ... All local laws and regulations including, but not limited to, local zoning or outdoor advertising control ordinances. Issuance of a permit by the Department does not relieve the applicant from obtaining all other permits required by law from any other state or federal agency, county, or municipality.

12. Wis. Stat. § 59.70(22) BILLBOARD REGULATION, provides as follows with regard to County regulation of billboards:

The board may regulate, by ordinance, the maintenance and construction of billboards and other similar structures on premises abutting on highways maintained by the county so as to promote the safety of public travel thereon. Such ordinances shall not apply within cities, villages and towns which have enacted ordinances regulating the same subject matter.

13. Wis. Stat. § 60.23(29) BILLBOARD REGULATION, provides as follows with regard to Town regulation of billboards:

The town board may:

Enact and enforce an ordinance, and provide a forfeiture for a violation of the ordinance, that regulates the maintenance and construction of billboards and other similar structures on premises abutting on highways in the town that are maintained by the town or by the county in which the town is located so as to promote the safety of public travel on the highways.

14. The County acknowledges that the Town of Madison has adopted a valid ordinance regulating billboards pursuant to Wis. Stat. § 60.23(29).

15. The County acknowledges that [Adams] was required to secure a permit from the Town of Madison for

the subject sign structure as a result of the ordinance adopted by the Town pursuant to Wis. Stat. § 60.23(29).

### STANDARD OF REVIEW

¶6 We review a grant of summary judgment de novo, applying the same methodology as the circuit court. *State v. Bobby G.*, 2007 WI 77, ¶36, 301 Wis. 2d 531, 734 N.W.2d 81. Summary judgment is appropriate when the affidavits and other submissions show that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08(2).

¶7 This case requires us to interpret and apply statutes to undisputed facts, which presents a question of law subject to de novo review. *Harnischfeger Corp. v. LIRC*, 196 Wis. 2d 650, 659, 539 N.W.2d 98 (1995). When interpreting a statute, we begin with the statutory language. *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. If the meaning of the statute is plain, we ordinarily stop the inquiry and apply that meaning. *Id.* We interpret statutory language “in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *Id.*, ¶46. “If this process of analysis yields a plain, clear statutory meaning, then there is no ambiguity, and the statute is applied according to this ascertainment of its meaning.” *Id.* (citation omitted). The purpose of statutory interpretation is to give full effect to the policy choices of the legislature. *See id.*, ¶44.

### DISCUSSION

¶8 The central dispute in this case is whether the Town’s billboard ordinance, which was enacted pursuant to the town billboard statute, WIS. STAT.

§ 60.23(29), preempts the County's billboard ordinance adopted pursuant to a county's general zoning authority under WIS. STAT. § 59.69(1) and (4). Dane County's position is that counties have the authority to regulate billboards and other similar structures pursuant to § 59.69(4) and WIS. STAT. § 59.70(22), that its billboard ordinance was enacted pursuant to § 59.69(4), and because a county's authority to regulate zoning is plenary, a town ordinance enacted under § 60.23(29) does not preempt a county's ordinance enacted under the general zoning statute. The County also contends it shares regulatory authority over billboards with the Town. Adams disputes the County's contentions and argues that the Town of Madison's billboard ordinance preempts the County's ordinance. We agree with the County.

¶9 Before we address the parties' arguments, we note they do not dispute several key points, which helps to narrow the scope of our inquiry.

- The County enacted its ordinance pursuant to its authority conferred by the general zoning statute, WIS. STAT. § 59.69. *See* ¶5, *infra*, Stip. Fact #6. This stipulation, however, does not address Adams' key argument, namely, that the County has no authority to enact a billboard ordinance under § 59.69.
- The county billboard statute, WIS. STAT. § 59.70(22), confers authority to counties to regulate billboards under the limitations set forth in the statute. *See* ¶5, Stip. Fact #12.
- Had the County's ordinance been enacted under § 59.70(22), the Town's ordinance would have preempted the County's ordinance.

- The Town “maintains the roadways abutting the property upon which the sign is situated.” See ¶5, Stip. Fact #1. Consequently, § 59.70(22) does not apply under the facts of this case.<sup>3</sup>

¶10 Thus, our inquiry focuses on two issues: (1) whether, in addition to its authority to regulate billboards under WIS. STAT. § 59.70(22), a county has the authority to regulate billboards pursuant to its general zoning authority under WIS. STAT. § 59.69(4), and, if so, (2) does a town ordinance enacted pursuant to the town billboard statute preempt a county’s billboard ordinance enacted under the general zoning statute. We therefore turn our attention to the general zoning statute, § 59.69.

¶11 WISCONSIN STAT. § 59.69 grants broad zoning authority to counties to regulate the use of land by establishing zoning districts. See *Willow Creek Ranch, L.L.C. v. Town of Shelby*, 2000 WI 56, ¶19, 235 Wis. 2d 409, 611 N.W.2d 693. WISCONSIN STAT. § 59.69(1) expresses the purposes for regulating zoning:

It is the purpose of this section to promote public health, safety, convenience and general welfare; to encourage planned and orderly land use development; to protect property values and the property tax base; to permit the careful planning and efficient maintenance of highway systems; to ensure adequate highway, utility, health, educational and recreational facilities; to recognize the needs of agriculture, forestry, industry, and business in future growth; to encourage uses of land and other natural resources which are in accordance with their character and adaptability; to provide adequate light and air, including

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<sup>3</sup> Although WISCONSIN STAT. § 59.70(22) does not apply to the facts of this case, it is necessary that we discuss the statute because it will assist in understanding the interaction between WIS. STAT. § 60.23(29) and § 59.69(1) and (4).

access to sunlight for solar collectors and to wind for wind energy systems; to encourage the protection of groundwater resources; to preserve wetlands; to conserve soil, water and forest resources; to protect the beauty and amenities of landscape and man-made developments; to provide healthy surroundings for family life; and to promote the efficient and economical use of public funds....

¶12 WISCONSIN STAT. § 59.69(4), confers zoning authority to counties to regulate “structures” and states in pertinent part:

(4) EXTENT OF POWER. For the purpose of promoting the public health, safety and general welfare the board may by ordinance effective within the areas within such county outside the limits of incorporated villages and cities establish districts of such number, shape and area, and adopt such regulations for such district as the board considers best suited to carry the purposes of this section.... The powers granted by this section shall be exercised through an ordinance which may, subject to sub. (4e), determine, establish, regulate and restrict:

....

(f) The location of buildings and *structures* that are designed for specific uses and designation of uses for which buildings and structures may not be used or altered.

(g) The location, height, bulk, number of stories and size of buildings and other *structures*.

Sec. 59.69(4), (f) and (g) (emphasis added).

¶13 To determine whether counties have the authority to enact billboard ordinances under this statute, we examine whether billboards are “structures” within the meaning of the phrases “location of buildings and structures” in sub. (f) and “other structures” in sub. (g). “Structure” is not defined for purposes of WIS. STAT. § 59.69(4). We therefore turn to the common and approved meaning of a word by reference to its definition in a recognized dictionary. See *Metropolitan Milwaukee Ass’n of Commerce v. City of Milwaukee*, 2011 WI App 45, ¶14, 332 Wis. 2d 459, 798 N.W.2d 287.

¶14 The common meaning of “structure” is ““something constructed or built ... something made up of more or less interdependent elements or parts ....”” *State v. Bleck*, 114 Wis. 2d 454, 463, 338 N.W.2d 492 (1983) (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 2267 (1961)). A billboard plainly falls within this definition of “structure.” This interpretation is supported by the phrase used in both WIS. STAT. §§ 59.70(22) and 60.23(29), “billboards and other similar structures.” Plainly, the phrasing used in those statutes shows that the legislature considers a billboard to be a “structure.” Thus, we conclude that a county may, under its general zoning authority granted by WIS. STAT. § 59.69(4), regulate the construction and maintenance of billboards within its geographical limits.<sup>4</sup>

¶15 Having concluded that counties have the power to regulate billboards pursuant to the general zoning statute, we now turn our attention to determining whether a town billboard ordinance enacted under the town billboard statute, WIS. STAT. § 60.23(29), preempts a county’s ordinance enacted under the general zoning statutes.

¶16 The legislature established a general zoning statutory scheme that requires counties to follow a rigorous procedure in enacting and enforcing zoning ordinances. *See* WIS. STAT. § 59.69(5). Once a county has drafted a proposed

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<sup>4</sup> Our conclusion that counties derive their authority to regulate billboards under two separate statutes is consistent with two published opinions of the Wisconsin Attorney General. *See* 46 Wis. Op. Att’y Gen. 148 (1957) (counties may regulate the maintenance and construction of billboards pursuant to what is now WIS. STAT. §§ 59.69 (4) and 59.70(22)); 61 Wis. Op. Att’y Gen. 191 (1972) (counties may regulate billboards under a county’s zoning ordinance pursuant to what is now § 59.69, or as a “separate ordinance” under § 59.70(22)). Although attorney general opinions are not binding authority or controlling precedent, they may have persuasive value. *See Kocken v. Wisconsin Council 40*, 2007 WI 72, ¶51 n. 34, 301 Wis. 2d 266, 732 N.W.2d 828.

zoning ordinance, the county is required to hold a public hearing “following publication in the county of a class 2 notice.” Sec. 59.69(5)(a). Only after the public has had an opportunity to be heard does the county board then vote on the proposed ordinance. Sec. 59.69(5)(b). In addition, a county zoning ordinance enacted under § 59.69(4) “shall not be effective in any town until it has been approved by the town board.” Sec. 59.69(5)(c). Towns may choose to not approve a county’s zoning ordinance. *Id.* Once a town board does approve the ordinance, the ordinance becomes effective in that town as of the date a certified copy of the resolution approving the ordinance is filed with the county clerk. *Id.*

¶17 In this case, all the towns in Dane County, including the Town of Madison, approved the County’s zoning ordinance and therefore the County’s billboard ordinance is in effect in the Town of Madison.<sup>5</sup> See WIS. STAT. § 59.69(5)(c). When we look to the text of WIS. STAT. § 60.23(29), we see nothing that explicitly precludes county regulation of billboards under a county’s zoning powers. Section 60.23(29) evinces the intent by the legislature to grant local control to towns over the maintenance and construction of billboards in specific locations in the town and the statute is silent on whether that power precludes a county from regulating billboards under either the general zoning statute or the county billboard statute.

¶18 The statutory scheme for local regulation of billboards does contain preemption language, but that language applies only to county billboard

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<sup>5</sup> See Dane County Board of Supervisors Land Use Manual last modified 4/6/1998 (website link last modified Apr. 19, 2011), available at <http://www.countyofdane.com/board/landuse.aspx>; at 9 (last visited Jan. 12, 2012).

ordinances enacted under WIS. STAT. § 59.70(22). Under that statute, a county may regulate billboards, without town approval, on premises abutting a highway maintained by the county. However, such regulation “shall not apply within cities, villages and *towns* which have enacted ordinances regulating the same subject matter.” Section 59.70(22) (emphasis added). In contrast, neither WIS. STAT. § 59.69 nor WIS. STAT. § 60.23(29) contain preemption language.

¶19 Thus, there is nothing that precludes a county, pursuant to its *zoning* authority, from regulating billboards in a town that has approved the county’s pertinent zoning ordinance, even if the town has enacted its own billboard ordinance under the town billboard statute. Therefore, under the facts of this case, we conclude the Town’s billboard ordinance does not preempt the County’s billboard ordinance. For the same reasons, we also conclude that both the County and the Town share regulatory authority over billboards located on property that abuts the subject highway maintained by the Town.

¶20 Adams makes several arguments in support of its position that the Town of Madison’s ordinance preempts Dane County’s ordinance. Adams first argues that WIS. STAT. § 59.69(4) confers no authority to counties to regulate billboards because the statute “makes no reference to the regulation of signs, billboards or outdoor advertising structures” and the language the County relies on as a specific allocation of statutory authority “is, at best, vague and nebulous.” We reject this argument. As we have concluded, § 59.69(4) confers authority to counties to regulate buildings and “other structures,” and we have explained that the plain meaning of “structure” includes billboards. *See* § 59.69(4)(g).

¶21 Adams next argues that WIS. STAT. §§ 59.70(22) and 60.23(29) are more specific than the general zoning statute, § 59.69(4), in regulating the

maintenance and construction of billboards, and therefore, under the rule of statutory construction that the more specific statute controls over the more general, §§ 59.70(22) and 60.23(29) are controlling. Adams asserts that this view is reinforced here because the town and county billboard statutes were enacted at a later time than the general zoning statute. See *Martineau v. State Conservation Comm’n*, 46 Wis. 2d 443, 449, 175 N.W.2d 206 (1970). We do not agree that either canon of statutory construction applies to the statutes at issue in this case.

¶22 Generally speaking, the rule of statutory construction that a more specific statute controls over a more general statute applies where two or more statutes on the same subject conflict. See *State ex rel. Hensley v. Endicott*, 2001 WI 105, ¶19, 245 Wis. 2d 607, 629 N.W.2d 686. The problem with applying this rule to this case is that Adams has not shown that interpreting WIS. STAT. § 59.69(4) as permitting the regulation of billboards conflicts with WIS. STAT. §§ 59.70(22) and 60.23(29). Rather, these statutes complement each other.

¶23 The County suggested at oral argument certain practical reasons for why the legislature would have given authority to counties and towns to enact a billboard ordinance under WIS. STAT. §§ 59.70(22) or 60.23(29).<sup>6</sup> The County

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<sup>6</sup> An opinion by the Attorney General provided another practical reason for why the legislature granted counties authority to regulate signs and billboards under two separate statutes. In an opinion evaluating a proposed Door County billboard ordinance to be enacted under WIS. STAT. § 59.70(22) (then § 59.07(49)), the Attorney General observed that a county, as a practical matter, would enact a sign or billboard ordinance under § 59.70(22), as opposed to WIS. STAT. § 59.69, because of the easier “mechanics” necessary to pass an ordinance under § 59.70(22). The opinion noted that a county may enact a billboard ordinance under § 59.70(22) without the requirement of seeking or obtaining town approval prior to passage. 61 Wis. Op. Att’y Gen. 191, 194. On the other hand, as we explained in ¶16, county ordinances enacted under its general zoning authority are not effective in any town until the town board has approved the ordinance. See § 59.69(5)(c). However, as a trade-off for this expedited passage methodology, a county loses some of the enforcement tools available to it under its general zoning authority. 61 Wis. Op. Att’y Gen. at 195.

noted that a county may not have passed a comprehensive zoning ordinance, pursuant to WIS. STAT. § 59.69, that includes a provision specifically regulating signs or billboards; the county may have enacted only an ordinance under § 59.70(22) regulating billboards and similar structures on premises abutting highways maintained by the county; or the county may have enacted no ordinance at all relating to billboard regulation. Under these circumstances, a town would have the authority to promulgate an ordinance under § 60.23(29) to ensure there is some regulation of billboards within the physical areas of that town identified in § 60.23(29).<sup>7</sup> A county may also wish to adopt a billboard ordinance under both § 59.69 and § 59.70(22). Under this scenario, a county could regulate billboards under its general zoning authority in towns that have approved the county's zoning ordinance and still regulate billboards under § 59.70(22) in towns that elect not to approve the county's zoning ordinance. Thus, although both § 59.69 and § 59.70(22) authorize counties to regulate billboards, and although only § 59.70(22) specifically mentions billboards, the two statutes may apply in

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<sup>7</sup> A town may also have general zoning authority, but only if the county has not exercised its authority under WIS. STAT. § 59.69. *See* WIS. STAT. § 60.61. By the express terms of § 60.61, a town is preempted from creating its own general zoning ordinance, to include regulation of structures such as signs and billboards, when the county has enacted a general zoning ordinance. WISCONSIN STAT. § 60.61 states, in pertinent part:

**(2) EXTENT OF AUTHORITY.** Subject to subs. (3) and (3m), if a town is located in a county which has not enacted a county zoning ordinance under s. 59.69, the town board, by ordinance, may:

(a) Regulate, restrict and determine all of the following:

....

3. The location, height, bulk, number of stories and size of buildings and other structures.

different situations. When we consider the statutes in their operative applications, their complementary relationship to one another becomes clear.<sup>8</sup>

¶24 Adams next contends that the County has “characterized” its ordinance as a general zoning ordinance in order to avoid the more limited authority to regulate billboards under the county billboard statute. This argument ignores the fact that Adams has stipulated that the County’s billboard ordinance is, in fact, a zoning ordinance. The parties’ stipulated fact number 6 states that the ordinance was enacted under WIS. STAT. § 59.69. Moreover, Adams does not direct our attention to any evidence that supports its contention that the County has incorrectly represented that its billboard ordinance was adopted as part of its zoning ordinance.

¶25 Adams finally argues that the County’s interest in promoting aesthetics is not sufficient to warrant its exercise of authority over billboards. In Adams’ view, the statutorily specified purposes of the general zoning statute are the same as those specified in the town and the county billboard statutes, except that the general zoning statute adds aesthetics as a purpose. According to Adams, this single difference does not warrant a construction of the general zoning statute as granting authority to counties to regulate billboards. However, the purposes expressed by the legislature for the adoption of these statutes are not implicated by our statutory construction analysis. If the purposes in the two statutes were

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<sup>8</sup> In a separate argument, Adams argues that only one statute can apply, and it must be the more specific one, citing *Estate of Genrich v. OHIC Insurance Co.*, 2009 WI 67, ¶34, 318 Wis. 2d 553, 769 N.W. 2d 481. But this argument merely reframes Adams’ central contention that a more specific statute controls over a general statute governing the same subject matter. We reject this “one statute” argument for the same reasons we rejected the general/specific argument.

identical, our interpretation would be the same. In any event, contrary to Adams' argument, the purposes for a county's general zoning authority include much more than aesthetic concerns. *See* WIS. STAT. § 59.69(1) ("promote the public health, safety, convenience and general welfare; to encourage planned and orderly land use development; to protect property values and the property tax base").<sup>9</sup>

## CONCLUSION

¶26 Based on the foregoing, we conclude that a county has the authority under both WIS. STAT. §§ 59.69(1) and (4) and 59.70(22) to enact ordinances regulating billboards and other similar structures. We further conclude that where, as in this case, a town approves a county zoning ordinance that includes a billboard ordinance enacted pursuant to the procedures set out in WIS. STAT. § 59.69(5)(c), the town's billboard ordinance adopted under the town billboard statute does not preempt a county's authority to regulate billboards in that town. Consequently, the Town of Madison's billboard ordinance, enacted under § 60.23(29), does not preempt Dane County's billboard ordinance DCO §§ 10.70, *et seq.*, enacted under § 59.69(4).<sup>10</sup> We therefore reverse the circuit court's

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<sup>9</sup> We note that the circuit court was concerned that the interpretation we adopt today would create problems by requiring an inquiry into the purpose for which a county billboard ordinance under WIS. STAT. § 59.69 was adopted. However, no such inquiry is necessary under our interpretation. An ordinance adopted under § 59.69 and approved by the town in question is not preempted by that town's adoption of an ordinance under WIS. STAT. § 60.23(29), regardless of purpose.

<sup>10</sup> The practical effect of our holding here is that Adams will now be required to comply with the provisions of Dane County's billboard ordinance. We take no position on how the County may enforce its ordinance in light of the fact that the billboard at issue has been constructed.

summary judgment granted in favor of Adams Outdoor Advertising and grant summary judgment in favor of Dane County.

*By the Court.*—Judgment reversed.



STATE OF WISCONSIN  
SUPREME COURT

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ADAMS OUTDOOR ADVERTISING, L.P.

Plaintiff-Respondent-Petitioner,

TOWN OF MADISON

Appeal No.: 2010AP00178

Involuntary Plaintiff,

-vs-

COUNTY OF DANE,

Defendant-Appellant.

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**SETTLEMENT AGREEMENT**

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This Settlement Agreement is made and shall be considered effective and binding as of the time and date it is executed by the parties.

The above parties agree as follows:

1). Adams shall pay to the County no later than May 31, 2012, the sum of \$375,000.00 as and for the resolution and payment of all fees, costs, fines, forfeitures and any and all other obligations it may have to the County under the facts and circumstances surrounding the above-captioned case and Case Number 12-CV-0962 in the Circuit Court for Dane County, Wisconsin ("Case II").

2). The County acknowledges and agrees that Adams' digital sign (including both faces) on the beltline at 75 W. Beltline Highway ("A-1 location") in the Town of Madison may remain up as is indefinitely and hereafter. The County acknowledges and agrees that such sign shall hereafter be regarded by the County as legal and nonconforming. Adams acknowledges

that its use of the A-1 location sign is subject to all laws and regulations regarding the use and maintenance of a nonconforming structure.

3). Adams shall, no later than May 31, 2012, remove the digital face on its sign structure at 500 W. Beltline Highway in the Town of Madison (“Zimbrick location”) and thereafter operate said sign as a static, externally illuminated, non-digital sign.

4). Adams shall cause to be dismissed its Petition to the Wisconsin Supreme Court in this action. This case shall thereafter be dismissed on the merits, with prejudice and without costs to either party.

5). Adams shall cause to be dismissed Case II.

6). This Agreement shall be considered irrevocable and binding upon the parties effective as of the time and date executed by the parties.

7). Any rulings, orders or events in the Wisconsin Supreme Court after such time and date shall not affect nor alter this Agreement in any way.

8). The parties shall act in good faith to consummate this Agreement as written.

9). No party to this Agreement shall be considered to have admitted or acknowledged liability or fault by signing this Agreement.

10). All issues related to Adams’ digital sign at the A-1 location, as well as the sign at issue in the above-captioned matter, pending or existing among the parties referred to herein are fully and finally resolved by this Agreement.

11). Adams acknowledges that this Agreement shall have no precedential effect, and it does not release Adams from complying with Dane County Ordinances in the future, nor from liability for any future Dane County Ordinance violations.

Dated in Madison, Wisconsin this 24<sup>th</sup> day of April, 2012.

**ADAMS OUTDOOR ADVERTISING, L.P.**

By: 

Attorney Thomas S. Hornig  
von Briesen & Roper, s.c.  
Counsel for Adams Outdoor Advertising, L.P.

4/23/12  
Date

5:00 PM  
Time

**TOWN OF MADISON**

By: 

Attorney John Gerlach  
LaRowe Gerlach and Roy, LLP  
Counsel for the Town of Madison

4/23/12  
Date

3:00 pm  
Time

**COUNTY OF DANE**

By: 

Attorney Carlos A. Pabellon  
Assistant Corporation Counsel

4/24/12  
Date

9:49 am  
Time