AGENDA # 2

City of Madison, Wisconsin

REPORT OF: URBAN DESIGN COMMISSION	**PRESENTED:** October 11, 2017
TITLE: 2620 East Washington Avenue – Appeal of the Zoning Administrator, Install Digital Sign Faces in UDD No. 5. 12th Ald. Dist. (48866)	**REFERRED:**
	REREFERRED:
	REPORTED BACK:
AUTHOR: Janine Glaeser, Secretary	**ADOPTED:** **POF:**
DATED: October 11, 2017	**ID NUMBER:**

Members present were: Richard Wagner, Chair; Dawn O'Kroley, Cliff Goodhart, Michael Rosenblum, Lois Braun-Oddo and Tom DeChant.

SUMMARY:

At its meeting of October 11, 2017, the Urban Design Commission **DENIED** the appeal of the Zoning Administrator to install digital sign faces in UDD No. 5 at 2620 East Washington Avenue. Appearing on behalf of the project were Ryon Savasta, Todd McWilliams and Brian Potts, all representing Adams Outdoor Advertising. Registered and speaking in opposition was Steve Holtzman. Staff present included Matt Tucker, Zoning Administrator; and Lara Mainella, Assistant City Attorney. The Chair inquired about how the applicant wished to present (each item individually or collectively).

Potts presented the 22 permits at issue in conjunction with a Federal lawsuit. McWilliams gave a short background about the refurbishments and modernizations of their billboards (raising them, making them digital, or raising and making them digital). The team discussed the constitutionality of the City's ordinance. The Chair noted that this body is not the Supreme Court and will not decide the constitutional questions. In 2015 the U.S. Supreme Court came down with its "Reed Decision," (Gilbert, Arizona) and overturned a municipal ordinance that was very similar to the City of Madison's ordinance. In that case, the court said municipalities can't restrict free speech by basing their requirements in the ordinance on the content of what is on a particular sign. Madison's ordinance adopted in 1990 does exactly that; it treats advertising signs differently than it treats political signs, differently than it treats real estate signs, differently than it treats other commercial signs and differently than it treats non-commercial signs. It also vests entirely too much discretion with City employees to decide which types of speech are acceptable on a sign; at base this violates the client's constitutional rights. If the courts overturn these permit application decisions, they feel the Federal courts will overturn the entire City of Madison sign ordinance as unconstitutional, which would have a broad impact on the City which this body could avoid by simply agreeing to allow Adams Outdoor Advertising to refurbish and modernize various signs throughout the City. The sign ordinance treats Adams like a second-class citizen by restricting their free speech and has done this for many years.

Steve Holtzman spoke in opposition to granting the appeals. There was City Council intent in the 1970s for a natural attrition of billboards to gradually go out of existence. If anything, City staff have bent over backwards

to give the industry every courtesy to keep existing and to allow new signs to go up, counter to the intent of the 1970s. When an ordinance is written to deal with aesthetics, this isn't anything to do with content. The limit has expanded over time with various settlements. Now they are requesting improvements to the billboards that were grandfathered in; that's not the way Zoning works. If something is grandfathered in it eventually goes out of existence rather than being improved or heightened. One thing that is true: Adams is a second-class citizen; you're a second class citizen because you don't pay your fair share of property taxes. Court agreements have looked at Adams' valuation not on the income generated but in the actual value of the billboard. Adams has put themselves into this position. What the Commission has in front of them today is a bullying tactic: "do this for us or we'll take you to court." We've seen enough bullying on the national stage, we don't need it in our City too. There is plenty of signage allowed in the ordinance and we can't roll over to this bullying tactic.

Lara Mainella, Assistant City Attorney responded briefly to Adams' presentation. The Chair was correct in saying that this administrative body is not here to decide the constitutionality of the City's sign ordinance. There are cases in Wisconsin law that set forth this concept. It is not the Commission's purview to say that the City's sign ordinance is unconstitutional and therefore we are going to grant all of these permits. It is incorrect for Adams to say that if the Commission grants the appeals, that will somehow save the City from a lawsuit. The City is responding to the Federal lawsuit in Federal court, which is the appropriate venue for handling those appeals. Because the appeals are on the Commission's agenda they will have to take action on them; Tucker is prepared to give a presentation on why he denied these permits or answer any questions about why these were denied.

The Chair noted that the Commission has a packet of letters for each appeal item, and should therefore make motions on each separate item. Chair Wagner has been consulting with City Attorney John Strange as to how the Urban Design Commission should handle these denials. The question before the Commission is should this body overrule the Zoning Administrator, or sustain the decision of the Zoning Administrator? A "yes" vote would be an override and a "no" vote would be sustaining the Zoning Administrator's denials.

Goodhart: Constitutional issues aside, on this issue can you tell us where the Zoning Administrator was in error of interpreting the ordinance that is in place? The applicant responded that they think the ordinance is unconstitutional; the ordinance on the books shouldn't be on the books. Whether or not he erred is immaterial. Goodhart disagreed; the Chair stated that this is the matter that is actually before this body. When Adams looked at this list of 22 items they wanted to make sure that their product stays viable for their customers. Goodhart replied that his question was about the appeal process, there is a procedure spelled out in the ordinance about how to appeal and on what grounds to appeal Zoning Administrator decisions. One of those criteria is that the applicant has to demonstrate to the Commission how the Zoning Administrator was in error of the interpretation of the ordinance. The applicant hoped to demonstrate that through discussion, but admitted they did not have any examples of actual errors, but they feel like each is worth examining specifically.

Goodhart moved that the applicant's request for reconsideration be denied. The Chair noted that that would change the nature of vote from what City Attorney Strange was suggesting. Goodhart then agreed to vote in favor of the appeal; the motion as suggested would be whether or not the Zoning Administrator should be overruled. If the Commission votes on that motion and denies it, then the appeal is denied. Adams stipulated that they would not add any additional facts into the record.

ACTION:

A motion was made by O'Kroley, seconded by Rosenblum, to move that the action of the Zoning Administrator be denied. There was no discussion on the motion. The motion was failed on a vote of (5-0) to deny the appeal of the Zoning Administrator for reasons set forth in the denial letter, with Braun-Oddo, O'Kroley, Goodhart,

DeChant and Rosenblum voting no; and Chair Wagner non-voting.