



Legislation Text

File #: RES 10-1228, **Version:** 1

Memorializing City Council action taken on October 20, 2010 denying the appeal of John Bodger, on behalf of CBS Outdoor, Inc. to receive a variance in order to allow a billboard located at 260 Commercial Street to continue operating with a digital display.

WHEREAS, on August 26, 2010, John Bodger, on behalf of CBS Outdoor, Inc., (hereinafter CBS), sought review of an Enforcement Notice issued by the Department of Safety and Inspections (hereinafter, DSI) on August 19, 2010, in which the City's zoning administrator ordered that the billboard located at 260 Commercial Street (City Reference Number 426), which originally had changeable face copies and was subsequently modified to a billboard with digital displays without following the billboard conversion procedures set forth under Leg. Code § 64.302(b)(4), be de-converted no later than Thursday, September 2, 2010; and

WHEREAS, in its August 26, 2010 application, CBS sought a variance to allow the said billboard to continue to operate with the digital display; however, the matter was duly processed as an administrative appeal pursuant to Leg. Code § 61.701(d) and assigned DSI-Zoning File No. 10-797430; and

WHEREAS, on September 20, 2010, pursuant to Legislative Code § 64.701(a), the Saint Paul Board of Zoning Appeals, (hereinafter, BZA), upon written notice, duly conducted a public hearing on the matter where all persons interested were given an opportunity to be heard; and

WHEREAS, at the conclusion of the September 20, 2010 public hearing, the BZA, based upon all the files, records, testimony and the report of staff, denied the request by CBS Outdoor, Inc., based upon the following reasons as set forth in BZA Resolution No. 10-797430 dated September 20, 2010:

1. Dayton Holding, Inc. owns the referenced property and CBS Outdoor is the lessee and owner of the subject billboard. No new billboards are allowed in the City of Saint Paul and the existing billboards are legal nonconforming uses. On December 12, 2007, the Saint Paul City Council adopted an ordinance under Council File # 07-1106 to permit the conversion of legal nonconforming billboards to ones with dynamic displays in exchange for permanently removing traditional billboards, the number required to be removed depending on whether the billboards are illuminated or not. Sec. 64.121.S. of the City of Saint Paul Legislative Code defines a sign with digital display as:

Any sign capable of displaying words, symbols, figures or images that can be electronically or mechanically moved or changed by remote, automatic or electronic means. Signs providing only time and/or temperature information are not considered to be signs with dynamic display for regulatory purposes.

The conversion of a standard billboard to one with dynamic display is not permitted without the sign company first removing a number of existing billboards. The referenced billboard was a standard illuminated billboard but has been recently retrofitted with digital numbers advertising the electronically changeable jackpot amounts for the Minnesota State Lottery. On August 19, 2010, a letter was sent to the billboard owner ordering the lottery numbers to be removed because the owner does not have the credits required to convert any portion of the sign to digital display. The billboard company is appealing that decision.

2. CBS in their appeal application states that the electronic numbers for the Minnesota State Lottery on the billboard remain stationary and constant in intensity and color during the day and change overnight. CBS contends that a sign with digital display is a sign which operates like a digital television and that the electronic

numbers on this billboard are more similar to gas station pricing and time and temperature signs. Consequently, since the mode of operation of these electronic numbers are not like a television, CBS claims that this billboard is not a sign with digital display as determined by the zoning administrator.

3. The definition of signs with dynamic display in Sec. 64.121.S of the Zoning Code clearly states that time and temperature signs are not signs with dynamic display, however, other signs with electronically changed figures are considered signs with dynamic display. The digital lottery numbers added to this billboard are neither time nor temperature signs, but they are electronically changed figures, qualifying it as a billboard with digital display. In summary, staff finds that the sign is a dynamic display sign as defined under the code and further, staff finds that CBS does not have sufficient sign credits to convert this sign to a sign with dynamic display.

WHEREAS, on September 23, 2010 and pursuant to Leg. Code § 61.702(a), CBS filed an appeal from the BZAs decision and requested a public hearing before the Council of the City of Saint Paul; and

WHEREAS, acting pursuant to Leg. Code § 61.702(b) and upon notice to affected parties, a public hearing was duly conducted by the Saint Paul City Council on October 20, 2010, where all interested parties were given an opportunity to be heard; and

WHEREAS, the Council having heard the statements made, and having considered the appeal application, the reports of staff, minutes, and the resolution and all the records of the BZA in this matter; DOES HEREBY

RESOLVE, that the Saint Paul City Council hereby upholds the BZAs decision in this matter as the appellant, based upon the testimony and the record produced before the City Council has failed to establish any error in the facts, findings or procedures on the part of the BZA in this matter; AND

BE IT FURTHER RESOLVED, that the appeal of CBS is therefore denied, the decision of the BZA in this matter shall be upheld, and the Council hereby adopts and incorporates herein by reference the reasoning of the BZA set forth in BZA Resolution No. 10-797430 as its own; AND

BE IT FINALLY RESOLVED, that the City Clerk shall immediately mail a copy of this Resolution to the CBS Outdoor, Inc., the BZA, the Planning and Zoning Administrators and to Dayton Holding Inc., which was designated by CBS as the owner of the said property.