

**BOARD OF ZONING APPEALS
MINUTES
MAY 11, 2006**

The Board of Zoning Appeals met on Thursday, May 11, 2006, at 5:15 p.m. in the Council Chambers, 45 E. Broad Street, Cookeville, Tennessee.

MEMBERS PRESENT: Tracy Cody, Kay Detwiler, and Sid Gilbreath.

MEMBER ABSENT: Jane Flatt, and Larry Burgess.

STAFF PRESENT: James Mills and Mike O'Mara.

STAFF ABSENT: Jayne Barns and Jim Shipley.

OTHERS PRESENT: See attached Record of Attendance.

NOTE: A court reporter was present and made a detailed record of the proceedings.

CONSIDER FOR APPROVAL THE MINUTES OF APRIL 13, 2006. Tracy Cody made the motion to approve the minutes of April 13, 2006. Kay Detwiler seconded the motion and the motion carried unanimously. **APPROVED.**

CONSIDER A REQUEST FOR AN ADMINISTRATIVE REVIEW, CONCERNING DENIAL OF PERMIT APPLICATION FOR A NEW OFF-PREMISE SIGN ON THE PROPERTY OWNED BY BILL HALL AND LOCATED AT 1191 SOUTH JEFFERSON AVENUE. REQUEST SUBMITTED BY DAVID ROLAND OF EAST WEST MEDIA. (THIS ITEM WAS POSTPONED AT LAST MONTH'S MEETING.) James Mills stated that consideration of a request from East West Media for an administrative review of a decision made by the Planning Department to deny an application for an off-premise sign on property owned by Bill Hall located at 1191 South Jefferson Avenue was postponed at the April 2006 meeting. Specifically East West Media requested that the Board reverse the decision of the Planning Department and order the issuance of a permit for the construction of an off-premise sign.

On September 2, 2004 East West Media requested a permit for an off-premise sign for 1191 South Jefferson Avenue. The application was substantially incomplete when filed and the Planning Department could not issue a permit. The decision by the Planning Department not to issue a permit was not appealed by East West Media to the BZA. On the evening of September 2, 2004 the City Council enacted a moratorium on the issuance of permits for off-premise signs. The moratorium was in place until certain amendments to the General Sign Regulations were adopted. The amendments included the establishment of a maximum number of billboards allowed within the corporate limits of the city, with the maximum being those existing, or having received a valid sign permit as of September 2, 2004.

On February 17, 2006 East West Media submitted to Mr. Jim Shipley, Cookeville City Manager, applications for off-premise sign permits for 16 locations, including a new application for 1191 South Jefferson Avenue. Since the issuance of a permit for an off-premise sign, without the removal of an existing off-premise sign, would violate provisions of the Zoning Code the application request was rejected.

The 2006 application request submitted by East West Media indicated that the permit was being applied for under TCA 13-7-208. TCA 13-7-208 specifies that industrial, commercial or other business establishments in operation and permitted to operate under zoning regulations or exceptions thereto in effect immediately preceding a change in zoning have certain rights. There was no off-premise sign in operation or permitted to operate at 1191 South Jefferson Avenue prior to the Zoning Code amendment. East West Media claims in its petition that because Mr. Hall had leased his property for the purpose of the location of an off-premise sign prior to the amendment to the Zoning Code establishing a maximum number of off-premise signs, he has a vested right under TCA 13-7-208 to erect an off-premise sign on his property. The city is not of the opinion that the mere existence of a lease qualifies as a business establishment in operation under the provisions of TCA 13-7-208.

At the April 2006 meeting there was some concern over an assertion made by Mr. Roland regarding actions of the sign inspector on September 2, 2004. Specifically Mr. Roland alleged that the sign inspector had requested that a modified affidavit of responsibility for compliance be signed and that the permit application was not completed because Mr. Roland refused to sign the affidavit. An affidavit from the sign inspector was submitted indicating that he would have issued the permit if Mr. Roland had signed the affidavit. Mr. Roland had the right to appeal the decision of the sign inspector but he failed to do so within the time period specified by the Zoning Code. Additionally, under the provisions of Section 233.3C of the Zoning Code, the original application filed by Mr. Roland on September 2, 2004 expired six (6) months after the date of filing. Mr. Roland's 2006 application for the location at 1191 South Jefferson Avenue could not be issued for the reasons previously stated.

Staff recommended denial of the request.

Jon Jones, Attorney for East-West Media, informed the Board that East-West Media was not appealing the 2004 decision by the City to not issue the sign permit but was asking the Board to order the permit to be issued based on an error made by the City.

Tracy Cody made the motion to approve the appeal on the basis of reversing the decision made by the Sign Inspector on September 2, 2004 and not on the basis of a pre-existing sign under TCA 13-7-208. Kay Dewiler seconded the motion and the motion carried unanimously. **APPROVED.**

CONSIDER A REQUEST FOR AN ADMINISTRATIVE REVIEW OF THE CITY'S RESPONSE TO A FORMAL COMPLAINT REGARDING AN OFF-PREMISE SIGN PREVIOUSLY LOCATED AT 1488 INTERSTATE DRIVE AND

APPEALING THE DECISION TO ISSUE A PERMIT TO EAST WEST MEDIA FOR AN OFF-PREMISE SIGN AT 1310 EAST SPRING STREET. REQUEST SUBMITTED BY DAVID DAY ON BEHALF OF LAMAR ADVERTISING. James Mills stated that Lamar Advertising has submitted a request for an administrative review of a response from the Planning Department to a Formal Complaint filed by Lamar and a decision made by the Planning Department to issue a permit for an off-premise sign on property owned by JWC Real Estate located at 1310 East Spring Street.

On March 9, 2006, David Day, on behalf of Lamar Advertising, filed a Formal Complaint with the Planning Department. This complaint involved two (2) issues. First, was a decision by the city to include in its 2004 inventory of off-premise signs a sign located at 1488 Interstate Drive and to include said sign in the maximum number of off-premise signs allowed within the city as specified in the General Sign Regulations of the Zoning Code. Second, the complaint requested that the city not issue a permit to East West Media for a new off-premise sign at 1310 East Spring Street based upon the removal of the off-premise sign at 1488 Interstate Drive.

Section 207.6P (1) of the Zoning Code provides as follows:

1. Maximum Number of Billboards

- A. The maximum number of billboards and similar off-premise signs allowed within the corporate limits of the City of Cookeville shall be limited to those existing, or having received a valid sign permit as of September 2, 2004.*
- B. For the purpose of these regulations, all billboard and similar off-premise sign locations existing as of September 2, 2004 shall be counted toward the maximum number of billboards allowed until such time as the location does not qualify under the provisions of Tennessee Code Section 13-7-208 (2) (b), (c), and (d), or until the owner of the property on which the billboard is located has agreed to the termination of the real property owner's rights to have a billboard at that specific location. Evidence of the landowner's agreement must be in a form satisfactory to the City of Cookeville.*

Section 207.6P (4) of the Zoning Code provides as follows:

4. New Billboard Permits

A permit for the construction of a new billboard or similar off-premise sign may only be issued after a new location becomes available as specified under the provisions of Section 207.6P (1) of these regulations, or for the replacement of a billboard which has been removed from an existing location.

After investigating the complaint, the Planning Department responded to the complaint on March 28, 2006. The city's response generally was that the sign at 1488 Interstate Drive was correctly classified as an off-premise sign and that a permit complying with the provisions of the Zoning Code would be issued for 1310 East Spring Street. In the 2004

inventory, the sign was classified as an off-premise sign primarily because it advertised a business (Patriot Mortgage) not at the location on which the sign was located.

East West Media acquired the off-premise sign at 1488 Interstate Drive. The off-premise sign was subsequently removed and the owner of the property on which the sign was located agreed, in a form satisfactory to the city, to the termination of his rights to have a billboard at that specific location. All requirements of the Zoning Code were met and a permit (Permit Number 2006-2) for a new off-premise sign at 1310 East Spring Street was issued to East West Media by the Planning Department on March 28, 2006. An off-premise sign has been erected at 1310 East Spring Street.

Staff recommended denial of the request.

Jon Jones, Attorney for East-West Media, questioned the legal standing for the Lamar Appeal.

Tracy Cody made the motion to deny the request and confirm the decision of the City. Kay Detwiler seconded the motion and the motion carried unanimously. **DENIED.**

CONSIDER A REQUEST FOR AN ADMINISTRATIVE REVIEW OF THE CITY'S RESPONSE A FORMAL COMPLAINT REGARDING AN OFF-PREMISE SIGN LOCATED AT 970 SOUTH JEFFERSON AVENUE (HOLIDAY INN PROPERTY) AND APPEALING THE DECISION TO ISSUE A PERMIT TO RECONSTRUCT SAID SIGN. REQUEST SUBMITTED BY DAVID DAY ON BEHALF OF LAMAR ADVERTISING. James Mills stated that Lamar Advertising has submitted a request for an administrative review of a response from the Planning Department to a Formal Complaint filed by Lamar and a decision made by the Planning Department to issue a permit for the replacement of an off-premise sign on property owned by Krishna Hospitality located at 970 South Jefferson Avenue.

On March 7, 2006, David Day, on behalf of Lamar Advertising, filed a Formal Complaint with the Planning Department. This complaint involved two (2) issues. First, was a decision by the city to include in its inventory of off-premise signs a sign located at 970 South Jefferson Avenue and to include said sign in the maximum number of off-premise signs allowed within the city under the General Sign Regulations of the Zoning Code. Second, the complaint requested that the city not issue a permit to East West Media to replace the off-premise sign at 970 South Jefferson Avenue.

Section 207.6P (1) of the Zoning Code provides as follows:

1. Maximum Number of Billboards

- A. The maximum number of billboards and similar off-premise signs allowed within the corporate limits of the City of Cookeville shall be limited to those existing, or having received a valid sign permit as of September 2, 2004.*

B. For the purpose of these regulations, all billboard and similar off-premise sign locations existing as of September 2, 2004 shall be counted toward the maximum number of billboards allowed until such time as the location does not qualify under the provisions of Tennessee Code Section 13-7-208 (2) (b), (c), and (d), or until the owner of the property on which the billboard is located has agreed to the termination of the real property owner's rights to have a billboard at that specific location. Evidence of the landowner's agreement must be in a form satisfactory to the City of Cookeville.

Section 207.6P (4) of the Zoning Code provides as follows:

4. New Billboard Permits

A permit for the construction of a new billboard or similar off-premise sign may only be issued after a new location becomes available as specified under the provisions of Section 207.6P (1) of these regulations, or for the replacement of a billboard which has been removed from an existing location.

After investigating the complaint, the Planning Department responded to the complaint on March 28, 2006. The city's response generally was that the sign at 970 South Jefferson Avenue was correctly classified as an off-premise sign and that a permit complying with the provision of the Zoning Code would be issued for its reconstruction. In the 2004 inventory, the sign was classified as an off-premise sign primarily because it had been used to advertise a number of events offered at a location other than the premises on which it was located.

East West Media acquired the off-premise sign at 970 South Jefferson Avenue. All requirements of the Zoning Code were met and a permit (Permit Number 2006-3) for the replacement of the off-premise sign at 970 South Jefferson Avenue was issued to East West Media by the Planning Department on March 29, 2006. The sign has not yet been replaced.

Staff recommended denial of the request.

Jon Jones, Attorney for East-West Media, questioned the legal standing for the Lamar Appeal.

Tracy Cody made the motion to deny the request and confirm the decision of the City. Kay Detwiler seconded the motion and the motion carried unanimously. **DENIED.**

CONSIDER A REQUEST FOR AN ADMINISTRATIVE REVIEW CONCERNING DENIAL OF PERMIT FOR AN OFF-PREMISE SIGN ON THE ARNOLD KINNAIRD PROPERTY LOCATED AT 1997 E. SPRING STREET. REQUEST SUBMITTED BY DAVID DAY ON BEHALF OF LAMAR ADVERTISING. James Mills stated that Lamar Advertising has submitted a request for an administrative review of a decision made by the Planning Department to deny an application for an off-premise sign on property owned by Arnold Kinnaird at 1997 East Spring Street. Specifically Lamar

Advertising is requesting that the Board reverse the decision of the Planning Department and order the issuance of a permit for the construction of an off-premise sign.

On March 22, 2006 Lamar Advertising requested an application for a permit for a new off-premise sign for property owned Arnold Kinnaird located at 1997 East Spring Street. This application request was denied on the basis of Section 207.6P (2) of the Zoning Code which provides as follows:

2. Rejection of Permit Applications

Any application for permit, the issuance of which would result in a number of billboards and similar off-premise signs exceeding the maximum number allowed, shall be rejected.

The maximum number of off-premise signs allowed with the city is specified in Section 207.6P (1) of the Zoning Code, which provides as follows:

1. Maximum Number of Billboards

A. The maximum number of billboards and similar off-premise signs allowed within the corporate limits of the City of Cookeville shall be limited to those existing, or having received a valid sign permit as of September 2, 2004.

B. For the purpose of these regulations, all billboard and similar off-premise sign locations existing as of September 2, 2004 shall be counted toward the maximum number of billboards allowed until such time as the location does not qualify under the provisions of Tennessee Code Section 13-7-208 (2) (b), (c), and (d), or until the owner of the property on which the billboard is located has agreed to the termination of the real property owner's rights to have a billboard at that specific location. Evidence of the landowner's agreement must be in a form satisfactory to the City of Cookeville.

Section 207.6P (4) of the Zoning Code provides as follows:

4. New Billboard Permits

A permit for the construction of a new billboard or similar off-premise sign may only be issued after a new location becomes available as specified under the provisions of Section 207.6P (1) of these regulations, or for the replacement of a billboard which has been removed from an existing location.

Lamar Advertising claimed in its request for an application that a site was available for a new billboard because of code violations for billboards located at 1580 South Maple Avenue and 4720 South Jefferson Avenue. As signs existed at these locations at the time the application was filed, (and continue to exist), no location was available for a new

billboard and the issuance of a permit would have violated the provisions of the Zoning Code.

Staff recommended denial of the request.

Kay Detwiler made the motion to deny the request and confirm the decision of the City. Tracy Cody seconded the motion and the motion carried unanimously. **DENIED.**

ADJOURNMENT: 7:40 P.M.

SUBMITTED FOR APPROVAL

SUBMITTED FOR RECORDING

**JAMES MILLS
DIRECTOR OF PLANNING**

**SID GILBREATH, ACTING CHAIRMAN
BOARD OF ZONING APPEALS**