Department of Community Planning and Economic Development – Planning Division
Appeal of the Decision of the Zoning Administrator
BZZ-4691

Date: February 25, 2010

Applicant: West Bank Business Association (WBBA)

Address of Property: City-wide

Project Name: WBBA Banners

Contact Person and Phone: Todd Smith, (612) 202-7573

Planning Staff and Phone: Shanna Sether, (612) 673-2307

Date Application Deemed Complete: January 21, 2010

End of 60-Day Decision Period: March 22, 2010

Ward: All **Neighborhood Organizations:** Cedar-Riverside, Seward and Downtown East

Existing Zoning: Not applicable for this application

Zoning Plate Number: Not applicable for this application

Legal Description: Not applicable for this application

Proposed Use: Not applicable for this application

Appeal of the decision of the Zoning Administrator: interpretation that the inclusion of a web address on a way-finding banner in the public right of way is *off-premise advertising.*

> **525.170. Appeals of decisions of the zoning administrator.** All findings and decisions of the zoning administrator, planning director or other official involved in the administration or the enforcement of this zoning ordinance shall be final subject to appeal to the board of adjustment, except as otherwise provided by this zoning ordinance. Appeals may be initiated by any affected person by filing the appeal with the zoning administrator on a form approved by the zoning administrator. All appeals shall be filed within ten (10) calendar days of the date of the decision. Timely filing of an appeal shall stay all proceedings in the action appealed, unless the zoning administrator certifies to the board of adjustment, with service of a copy to the applicant, that a stay would cause imminent peril to life or property, in which case the proceedings shall not be stayed. The board of adjustment shall hold a public hearing on each complete application for an appeal as provided in section 525.150. All findings and decisions of the board of

adjustment concerning appeals shall be final, subject to appeal to the city council as specified in section 525.180.

Background and Analysis: The appellant has filed an appeal of the decision of the Zoning Administrator's interpretation that the inclusion of a web address on a way-finding banner in the public right of way is *off-premise advertising.* The West Bank Business Association (WBBA) is proposing to install 25 banners in the public right-of-way at various locations on Cedar Avenue, Riverside Avenue and Washington Avenue. WBBA is proposing to add the newly created web address (www.thewestbank.org) to the way-finding banners. The Zoning Administrator has determined that the inclusion of the web address meets the definition of *off-premise advertising*; a use not allowed in the proposed locations in the public rights-of-way along Cedar Avenue, Riverside Avenue and Washington Avenue.

Off-premise advertising is defined in the Minneapolis zoning code as:

> *Off-premise advertising sign or billboard is defined as "[a] sign which directs attention to a business, establishment, product, service, interest, activity or entertainment not exclusively related to the premises where such sign is located" in section 525.160 of the zoning code.*

Similarly in 2002, the Loring Business Association (LBA) and Citizen's for a Loring Park Community (CLPC) requested the installation of approximately 200 neighborhood identification signs to be located in the public right of way. The proposed identification signs included the internet web address for the LBA. The city attorney prepared an opinion regarding the inclusion of a web address on neighborhood identification signs and the conclusion was that they were considered off-premise advertising and therefore prohibited per Chapter 544 of the zoning code. A copy of the memo with the city attorney opinion is attached. The appeal to allow for the web address on the banners by LBA and CLPC was denied by the City Council on April 19, 2002.

The appellant has stated that they "do not believe that 'steering' people to a web site itself is in and of itself - advertising." Further, they have identified the Stadium Village Business Association, which is located in the City of Minneapolis and have similarly provided their website on way-finding banners in the public rights-of-way.

Findings:

1. Commercial advertising is not allowed in the public right-of-way absent specific legislative authority from the state.

2. Advertising signs in general, whether off-premise or on-premise, are subject to Zoning Code regulations regarding the same.

3. The Zoning Code defines "off-premise advertising sign" as a "sign which directs attention to a business, establishment, product, service, interest, activity or entertainment not exclusively related to the premises where such sign is located." MCO § 520.160.

RECOMMENDATION

Recommendation of the Department of Community Planning and Economic Development – Planning Division for the appeal of the decision of the zoning administrator:

The Department of Community Planning and Economic Development – Planning Division recommends that the Board of Adjustment adopt the above findings and **deny** the appeal of the decision of the zoning administrator's interpretation that the inclusion of a web address on a way-finding banner in the public right of way is *off-premise advertising.*

Attachments:

1) Zoning Administrator interpretation in an e-mail dated December 10, 2009.
2) City Attorney memo to the Zoning and Planning Committee dated March 25, 2002.
3) Appeal statement provided by the applicant.
4) Three proposed banner designs.

BOA Minutes
February 25, 2010
BZZ-4691 City-wide Appeal of Zoning Administrator

Matt Perry: I thank the public who have been waiting diligently for item number 7. I thank you for your patience in staying as late as we are here tonight. So, with that let's begin on item number 7.

Shanna Sether: Good afternoon again Mr. Chair, members of the Board of Adjustment. Item number 7 is an appeal of the decision of the Zoning Administrator regarding an interpretation that the Zoning Administrator has made about the inclusion of a web address on wayfinding banners located in the public right of way. The Zoning Administrator has determined that the use of the web address on the wayfinding banners is determined to be off premise advertising, which is not allowed in the proposed locations that are proposed by the Applicant/Appellant. The appeal before you today is similar to an appeal that we heard just a few months ago. It is a City-wide appeal, it's not specific any particular address. The locations that the Appellants are requesting to allow for the inclusion of the web address are specifically to Cedar Avenue, Riverside Avenue and Washington Avenue. However, this type of an appeal, if permitted by the Board of Adjustment, would be allowed anywhere in the City of Minneapolis. So this is what we call a City-wide appeal. Notifications were actually only sent to the neighborhood organizations that were specifically where these banners will be located to avoid confusion, as we did previously on the last appeal. Okay, that being said, moving forward. The Appellant has filed the appeal of the decision of the Zoning Administrator stating that the inclusion of a web address is not necessarily steering people to the website itself and is in and of itself not advertising. The definition of off premise advertising as defined in the Minneapolis Zoning Code is as follows:

> "a sign which directs attention to a business, establishment, product, service, interest, activity or entertainment not exclusively related to the premises where such sign is located"

Now all of these wayfinding banners are located in the public right of way. Similarly in 2002 the City of Minneapolis City Attorney's Office was asked to review a similar proposal over in Loring Park. The Loring Business Association and the Citizens for Loring Park Community requested 200 banners in their neighborhood on their identification banners that will be located in the public right of way to include their web address. The City Attorney at the time, Carol Lansing, prepared a very lengthy memo addressing the legal basis for why it is deemed to be off premise advertising and therefore not allowed. At the time, that particular application was before the Transportation, Planning and Public Works Committee of the City Council. Since then it's been determined that that is the incorrect direction for this type of request to go. That was through – in a denial of an encroachment permit. Instead, as I'll restate in the Findings, advertising signs in general, whether it be off premise or on premise, are subject to the regulations of the Zoning Code. Therefore, the determination is made by the Zoning Administrator. Any appeals to that decision go before the Board of Adjustment if your decision appealed, and then on to the Zoning and Planning Committee because at the root of it it's really a Zoning Code regulation. So not something specific to Public Works standards I guess would be the easiest way to explain that. So based on the Memo prepared by the City Attorney in 2002 the appeal to allow for the inclusion of web addresses on the banners by the Loring Business Association and Citizens for Loring Park Community, that appeal was denied by the City Council April 19, 2002. So I've since checked in with our City Attorney to determine whether or not that Memo written in 2002 still holds water and he has concurred that it still does. The FHA regulations identified in that Memo are still consistent as far as how they handle highway signs for Adopt a Highway, for example, which read in the Memo. Staff is recommending denial of the appeal of the Zoning Administrator based on the following findings: First, that commercial advertising is not allowed in the public right of way absence specific legislative authority from the State, which does not currently exist. Second, as previously mentioned, advertising signs in general, whether off premise or on premise, are subject to Zoning Code regulations regarding the same. And third, the Zoning Code defines off premise advertising signs as a sign which directs attention to a business establishment, product, service, interest, activity or entertainment not exclusively related to the premises where such sign is located. And that's per 520.160 definitions. The Appellant has also mentioned that there is a neighboring business association that has banners similarly in the public right of way and they also advertise their web address. This picture's pretty difficult to read but I can just show you from my perspective where their website is included. So I

checked in with Public Works and everyone in Zoning. It is our understanding that these banners were installed illegally without any authorization from the City of Minneapolis. Therefore, these were not under a different set of rules and therefore permitted, so staff believes that we've been consistent in applying the interpretation that this is off premise advertising and therefore not allowed. Off premise advertising in its simplest form is typically a billboard. So that's one example of what an off premise sign is. Where an on premise sign is a business with a sign attached to it just as we recently reviewed, just the last item. So with that, again staff is recommending denial of the appeal and I can take any questions.

Matt Perry: And before we start I just want to again, as my predecessor and his predecessor were apt to do, is remind my colleagues that we are looking at not a variance, obviously, but whether the Zoning Administrator properly interpreted the Code. And with that Mr. Koch and then Mr. Sandberg.

Chris Koch: Could you put the actual sign that we're talking about …

Shanna Sether: Sure. The Appellant has submitted these three mock ups.

(unintelligible from unidentified audience member)

Shanna Sether: They have decided. At the time the application was submitted they were between the three signs. Here as the official design that they would like to go forward with.

Chris Koch: So the issue is not that it says West Bank.

Shanna Sether: Correct. It would only be the inclusion of the web address at the bottom.

Chris Koch: Just the inclusion of the WestBank.org web address.

Shanna Sether: Correct, because that is deemed to be off premise advertising.

Chris Koch: Because it's directing people – I'm just trying to understand the basis of the Zoning Administrator since he opted not to present his own.

Shanna Sether: We believe that the inclusion of the web address directs attention to, in this case, several businesses, establishments, products for sale at these businesses, services provided in the West Bank area, interest and activity and entertainment. I don't know if everyone had a chance to go to the website to take a look at it, but all of those businesses, I shouldn't say all, but the majority of businesses if not all, in the West Bank area are advertised on their website.

Chris Koch: So just so I understand, is this a community organization?

Shanna Sether: It's a business association.

Chris Koch: It's a business association. So it's okay for the business association to put up banners at all in that area?

Shanna Sether: Yes, they are permitted to install wayfinding banners or banners nonetheless to kind of identify themselves geographically as an entity.

Chris Koch: And that's a permitted thing.

Shanna Sether: Yes.

Chris Koch: So if I lived in that neighborhood, for example, I couldn't say I want to put up a banner saying Chris's Apartment.

Shanna Sether: It's akin to a neighborhood identification sign. So when you're entering say, Marcy Holmes Neighborhood District they have signs that are about the same size as a No Parking sign. So they're akin to a governmental sign and therefore permitted as a banner. It's the inclusion of the web address that takes us to the next level which is off premise advertising.

Chris Koch: So I'm just curious though, what is – what determines who can put them up? Because this kind of gets to my – where I'm going with this is the idea that if they change the name of the neighborhood to the WestBank.org Neighborhood then this would be okay?

Shanna Sether: Unfortunately I can't answer that question.

Chris Koch: Hypothetically – I'm talking hypotheticals here, but I'm just curious – okay, never mind. Thanks.

Matt Perry: Alright, Mr. Sandberg and then Mr. Gates

Dick Sandberg: Mr. Chair, just for purpose of full disclosure I wanted to mention that the organization cited here, Citizens for Loring Park Community, I'm currently involved with as President, but this project occurred before I was involved with the organization so I'm not planning to recuse.

Matt Perry: Thank you and I should have thought of that, but I'm glad you brought that up. Mr. Gates.

Paul Gates: Thank you Chair Perry. Furthering Mr. Koch's line of questioning, West Bank – is that an officially sanctioned neighborhood group?

Shanna Sether: It's not a neighborhood organization, it is a business association.

Paul Gates: It's a business organization.

Shanna Sether: So it's similar to the Lake Street Council is another one that comes to mind right away.

Matt Perry: The Nicollet East Harriet Business Association is one.

Shanna Sether: Thank you, yes.

Paul Gates: And the City doesn't really sanction business organizations in the way that it, maybe unofficially, but still sanctions neighborhood organizations, right? At least through the NRP process.

Shanna Sether: That is correct.

Matt Perry: I would like to correct that statement. Since I am the President of a business association. The City does in fact – I wouldn't use the word sanction, but business associations are recognized by the City and I think mainly for the purpose of funding. So business associations are eligible for certain City funding and therefore the City does keep track of business associations that have, for lack of a better term, registered with them.

Paul Gates: Alright, thank you for that distinction. Why would simply the term West Bank not be considered advertising? I know you said that before but I guess I'm not quite sold on it. Can you try it again?

Shanna Sether: The Zoning Administrator has determined that the recognition in name only is akin to a governmental sign, which is exempt from the Zoning Code. It is the inclusion of the web address which directs folks to what I mentioned earlier: interests, businesses, etc., that makes it an off premise advertising sign.

Paul Gates: And so what would prevent any group from putting up a sign in the neighborhood?

Shanna Sether: A sign that is installed on a banner in the public right of way is required to be reviewed by not only Planning as a function of CPED, but also Transportation and Public Works. So there is a permit review process to ensure guidance and compliance with the Public Works standards and also the Zoning Code.

Paul Gates: Okay, but assuming that the sign would comply with Public Works standards and the Zoning Code, who makes the judgment about whether or not it belongs there? Maybe this getting beyond the issue at hand here, but it's really murky.

Shanna Sether: I cannot speak to the Public Works standards because that is the entity that generally controls the public realm, so the public right of way. It's possible that the Public Works standards has something specific that say that you can't just put up a sign with their approval unless it's based on some sort of entity or geography or organization. I can't speak to that, unfortunately. But I can say from the Zoning Code, is that we regulate the content of that signage and determine whether or not it's akin to a governmental sign or an off premise sign in this case.

Matt Perry: I'm a little confused Mr. Gates where you're going with that. The body that is reviewing the signs is not really a question here. The question ….

Paul Gates: I understand.

Matt Perry: … is whether the sign has – that the inclusion, and it is the inclusion only of the web address makes this an off premise advertising sign.

Paul Gates: I think there are issues that this brings up that go far beyond the question at hand. But we'll stick to the question at hand.

Matt Perry: That may be, but we'll save that for another Board.

Shanna Sether: Something that may come out of this process is back in 2002 the direction from the City Council was for Public Works and Planning to take a look at their Code for some sort of allowing of the web address, maybe in the future through a Code amendment. That is not before you today. What is before you today is the Zoning Administrator's interpretation that the web address is or is not deemed to be off premise advertising.

Matt Perry: And before recognizing Mr. Koch I'll just remind my colleagues as well that as much as we may want to make policy, that is not our responsibility. Mr. Koch?

Chris Koch: So this – the Zoning office looks at these banners as being okay because they're wayfinders, like you wouldn't permit a West Bank on the East Bank – West Bank banner on the East Bank because you'd be saying go to the West Bank.- you'd be looking at it as advertising for the West Bank? I'm just trying to figure out what is wayfinding.

Shanna Sether: It would be deemed to be off premise advertising if it advertised in the wrong location of the City.

Chris Koch: Okay.

Shanna Sether: Yes.

Chris Koch: Thank you.

Matt Perry: Alright. Any other questions of staff?

Shanna Sether: Thank you.

Matt Perry: Thank you Ms. Sether. We learned a heck of a lot more than maybe we started out intending to learn. And with that is the Applicant present? Yes ma'am.

Lisa Hamre: My name is Lisa Hamre and I'm hear on behalf of the Westbank.org, no I mean Business Association. Procedurely …

Matt Perry: Excuse me ma'm, could you say your name again?

Lisa Hamre: Lisa Hamre. I'm the Community Organizer for the West Bank Business Association.

Matt Perry: Thank you Ms. Hamre.

Lisa Hamre: Procedurally, how we got here is our original permits did not include the web address. Part of my job as the Community Organizer is into – first of all to go back on how we're funded. We're funded through Great Streets funding and we're also funded through NRP. What we are responsible for in getting additional next years' round are deliverables. And part deliverables for my job is getting people to visit that website. So when this, the whole banner thing came through, our original branding logo did not include the web address. It was my idea - I'm like, this is crazy, we spent $8,000 to develop a website, thousands more to get this branding campaign, we need that website on there to drive business but for community purposes for information gathering so we can get e-mail addresses so that we can get standard so we can people to visit the website so that we can communicate that way. So there's not an official denial. Then when we started asking about the website it's almost like somebody asked someone and it was all verbal and through e-mails and the next thing we knew this was not allowed. So procedurally how got here was a little bit backwards. It's our position though, that this is not in fact advertising. We paid for the website with City funding. We have paid for the banners, or will pay for the banners, with City funding And it's our position that it's in the public interest to have strong successful commercial corridors and that the use of the website on the banners furthers that goal of successful commercial corridors. And again, the public purpose is identifying the whole commercial neighborhood as a district. I find that there are many differences between the present day of 2010 and the Opinion written by the City Attorney in 2002. First of all, off premise advertising is defined as one which directs attention to a business, an establishment, a product, service interest or activity or entertainment. I don't believe that this website does that. It's not promoting one business. It's not promoting one set of businesses. It's not promoting eating. It's not promoting drinking. It is promoting the West Bank as a safe vibrant neighborhood. We want you to come, we want you to visit, we want you to spend your money, we want you to be safe. (end of tape pause) … banner than what we've proposed. Eat Street specifies that we are a - they want to use direct attention to a type of service or activity. I believe it states on their banner "17 Blocks of Eating" or something of that nature. So again, to me, what they're doing is definitely more advertising than what we're trying to accomplish. Again, referring back to the 2002 Opinion, I believe that our banner is distinguishable from the Federal Highway Administration's Adopt a Highway signs. Our signage, like other neighborhoods are identity signs which exist to promote the business district. The FHA signs are to acknowledge the litter pick-up services of the identified person or organization, but not to promote that person or organization. Again, we are trying to promote a whole business district. There is kind of a shred of light through the Opinion where it states that a public purpose would have to be identified for allowing website addresses on signs or banners in the right of way. Again, to my argument that the public purpose has been defined through the Great Streets language, through what they are wanting us to do to make our neighborhood a better place to visit. Again, I'm quoting from Carol Lansing's Opinion but she states that it could be argued that inclusion of a web address for a recognized neighborhood or business association on signs or banners identifying residential and/or commercial areas outside of those special service districts serves a similar public purpose. It was her opinion that she didn't think that that could be done because there were not identified neighborhood groups. I don't know what was different in 2002, but as w've stated and as you're aware of as a director of an organization, there are identified neighborhood organizations. Whether you call it sanctioned – you can go on CPED's website and it lists which businesses and organizations are even entitled to apply for funding through the Great Streets and the Neighborhood Revitalization Programs. Again, I'm certainly not here to be the tattle tale of what other businesses are doing, but as I drove home two days ago, there's another organization out there doing – adding their web address to their banners. I don't want to say who it is, I don't want Public Works running out, but again, I'm not here to say well we should be able to do it because other people are doing it wrongly. I think it's the opposite. I think business associations are including their web address because the City paid for the website, the City paid for the banners and to me, you're not doing your job if you're not promoting the use of the website. So again, there are other people doing it and I think that it's not advertising. In summary, I do believe there's a way to accomplish what we want, which would be language that states that the inclusion of the website of a City recognized neighborhood or business organization on a sign or banner in the public right of way serves the public purpose of increasing the strength and vitality of Minneapolis neighborhoods and business districts. That's all I have.

Matt Perry: Alright. Are there any questions for Ms. Hamre? I see none. Thanks for your presentation and coming down and again, thanks for your patience tonight and staying so late. Is there anyone here in addition who would like to speak in favor of this appeal?

Joyce Wisdom: Good evening Mr. Chair, Board members, my name is Joyce Wisdom. I'm the Executive Director of the Lake Street Council.

Matt Perry: Can I get your address too please?

Joyce Wisdom: Excuse me?

Matt Perry: Your address.

Joyce Wisdom: My office address is 919 East Lake. My home address is 2816 28th Avenue South.

Matt Perry: Thanks.

Joyce Wisdom: I would just add a little clarification about our business associations. It's already been said that we are recognized by the City of Minneapolis. Remember that our neighborhood associations were also recognized by the City of Minneapolis long before NRP. We do receive, as has been mentioned, Great Streets funding. That's an application process. Not every business association applies for that funding. We also receive business association assistance funding through the City of Minneapolis. The business associations in the City of Minneapolis are seen much as our neighborhood associations are. They are a part of the community engagement and the economic development of the City. I believe that the mistake that's being made here is to call these banners and the inclusion of the website advertising. We repeat, as has already been said this evening, they are wayfinding, and there is a difference. As you consider this appeal I'd like you to think of the need to promote Minneapolis and its neighborhoods and how the Internet is helping us to do just that. You know that many area associations have created websites that promote specific areas of this city. Promoting these informative websites on the banners in our community further brands the area. It's branding, it's not advertising. It brands our areas as places to live, work and visit. Street banners are about drawing a crowd. There's no better way to do that than to use our business community URLs on those banners. We should be opening every door to new opportunities to promote what's good about this city, each neighborhood and every commercial corridor. The URLs of these organizations represent an entire business district. They do not constitute advertising in the public right of way and are in fact consistent with the City's own goals for sharing information and revitalizing our business districts. Our understanding of how people use the Internet is more sophisticated than it was back in 2002 when the interpretation that organizational URLs should be considered prohibited advertising was upheld. Surely you must recognize that it is now an expected common sense way to engage and motivate residents and passersby in our communities. I thank you.

Matt Perry: Thank you. Ms. Wisdom? Are there any questions for Ms. Wisdom? Thanks. Is there anybody else here to speak in favor of this appeal? Will you state your name and address for the record?

Jennifer Blevins: Mr Chair, members of the Board I'm Jennifer Blevins. I live at 2707 South 8th Street. So I'm a resident of the Cedar Riverside Neighborhood. I work at the Brian Coyle Center as the Director. I serve on the Board of the West Bank Community Coalition. I serve on the Board of the West Bank Business Association and I've been Chair of the Housing and Economic Development Committee for the NRP in our neighborhood. They're all community organizations and I just want to say you know I'm not really big on technology. I'm getting there, but we kinda have to step up because technology is our way for the future for making connections and I started using the website in about December and it's my go-to place to see what's going on to see where I can connect with people. I'm hoping my own organization will start posting things, especially things that involve youth so it becomes a connection that's intergenerational. So I'm not going to repeat what everybody else said, but I don't see it as advertisement. It's a whole community based connection point. Thank you.

Matt Perry: Alright. Thank you very much for coming down and speaking tonight. Is there anyone else here to speak in favor of this application?

Robin Garwood: Good evening Mr. Chair, Board members. My name is Robin Garwood, I live at 2816 39th Avenue South. I am Policy Aide to Second Ward Council Member Cam Gordon, who represents this neighborhood. But I want to be very clear that I am speaking for myself tonight, I'm not speaking for Council Member Gordon. The one piece that I would like to add to this discussion, basically we have a decision to make between two ordinances – two definitions. Currently that would be defined, according to staff, under the 520.160. Without - that would be defined as a governmental sign under 543.40 § 2. I think it's important for folks to look at that Ordinance as well and I'm just going to read it for you. That Ordinance exempts governmental signs from the regulations of the Zoning Code and defines them as signs including but not limited to traffic control and other regulatory purpose signs, street signs, informational signs, danger signs and railroad crossing signs. I consider that an informational sign. The inclusion of the website is directing people to an informational resource that the City used public dollars to pay for. And even if it wasn't, I think that it's included under the including but not limited to phrase in there. So I think that there's – you have clear latitude to define this as a governmental sign using existing Code language. Thanks very much.

Matt Perry: Thank you Mr. Garwood. Are there any questions? Alright, thank you for coming down and again for your patience this evening and staying so late. Is there anyone else here to speak in favor? Is there anyone to speak against this appeal? I see no one. We'll close the public hearing. Board comment? Before Board comment I again would ask that we keep our focus on whether this sign, and I think in particular the Zoning Administrator's pointing to the inclusion of the URL, not the rest of the sign, the inclusion of the URL falls under the definition of off premise advertising as defined in the Minneapolis Zoning Code. So if we could keep our discussion to that I would very much appreciate it. Mr. Finalyson?

John Finlayson: Alot of the arguments that we heard are good points. I mean NRP is good program, Great Streets is probably one of the better things the City has ever done. It's really nice, but this isn't a variance and they would have been variance arguments. The thing about the appeal of a Zoning Administrator is that our purview is so stinking narrow, it's really hard to wander off the reservation on it, and I can't find a way to wander. I've been trying to wander, but it isn't working for me. So I'm going to have to go with the thought that Mr. Poor, the Zoning Administrator, called it. And despite the fact that it was 2002 the last time this came up, there's even an attorney's Opinion on it and even if the last eight years have turned the website into a ubiquitous add-on, it still is what it is. So I'm going to have with what the Zoning Administrator called.

Matt Perry: And if I may for a moment, I'm sorry to – for my colleagues again, I've been doing this more often than normally do – Ms. Sether will you refresh my memory of your comments earlier regarding your consultation with the City Attorney's Office?

Shanna Sether: Yes.

Matt Perry: Currently about the 2002 Memo?

Shanna Sether: I checked in with our City Attorney, Erik Nilsson, as to whether or not that Memo was still relevant to 2010 and he indicated that it is still relevant. So the information in that Memo as well as how we've handled previous inquiries regarding URLs on banners have been handled the same way which is to not allow them. They are off premise advertising. So yes, the Memo from Carol Lansing is relevant.

Matt Perry: Mr. Ditzler and then Mr. Gates and then Mr. Koch.

Matt Ditzler: I think my advertising friends would be just up in arms over this – both sides. I think that there is a – I would concur with Mr. Finalyson that there's been some great discussion points here but it really is more of a policy change that I think is being asked for here in this case. It looks like, you know, maybe some of the needs of the neighborhoods have changed and you know, whether this is a sign or a wayfinder or whatever it is, when I look at exactly what we're to examine is that I believe the Zoning Administrator has made the right choice and the fact that website is on there specifically directs people to go to a specific spot. And it's not – it may be some sort of governmental sign or some sort of quasi governmental entity that owns it, or creates it, or bought it, or whatever, but it's not the same as a MNDoT sign that's on the side of the road. It's not the same as the City of Minneapolis Welcomes You as you come into the City. It's not that. There is private business interest here in having people go to the site. And I know that your funding is directly tied to it. So if falls in this really odd gray category right now

and there's not clear zoning law to deal with it. We are not the body that is made to dictate what that is. This needs to go on through – it needs be addressed by City Council I completely agree. I don't know how I feel about having banners all over the City with websites on them as I'm driving around and pull out my Blackberry and try to find them and crash into stuff, but I think that because it's in the public right of way, and I think that is the language that gives me great pause. Because we are encroaching upon everybody's public right of way to put this there. And there's alot that goes into that. And the Zoning Administrator has decided that that aspect of this design is not okay for various reasons and I have not seen any testimony today or heard anything to tell me otherwise. And I think for those reasons I will be supporting staff on this.

Matt Perry: Thank you Mr. Ditzler. Mr. Gates?

Paul Gates: Thank you Chairman Perry. I'm not concurring. I'm finding that there's no distinction between the language on the top of the sign and that on the bottom. They both refer to the same thing. At WestBank.org in this case you would find a more thorough discussion about what West Bank is. But that really is moot. They represent one in the same thing, and so if the language on the top is not advertising, then that on the bottom is not advertising either. So I'm not concurring.

Matt Perry: Alright, thank you Mr. Gates. Mr. Koch?

Chris Koch: If the City is going to consider this – the top part – not advertising and I guess I can't separate the Association from their website. I don't believe it's off premise advertising. Clearly.

Matt Perry: Alright, thank you. Mr. Sandberg?

Dick Sandberg: I think I agree mostly with points Mr. Finlayson and Mr. Ditzler made. I think that there is a good argument for having that kind of a direction on signs to people reading the sign, but we're not the body to make that decision. The one argument I have heard about for having a website being referred to on this kind of sign is websites can change. What exists on the website today may not be the same as what's on next week or 10 years from now when the sign is still there. So I think it requires more deliberation and thought than we're capable of giving it as this body here, so I would move staff recommendation.

John Finlayson: Second.

Matt Perry: There's a motion and a second. Is there further discussion? The motion is to deny the appeal and uphold staff recommendation which is to deny the appeal of the decision of the Zoning Administrator's interpretation that the inclusion of a web address on the wayfinding banner in the public right of way is an off premise – is off premise advertising. Would the Clerk please call the roll?

Clerk: Mr. Gates?

Paul Gates: No.

Clerk: Mr. Ditzler?

Matt Ditzler: Yes.

Clerk: Mr. Finalyson?

John Finlayson: Aye.

Clerk: Mr. Koch?

Chris Koch: No.

Clerk: Mr. Sandberg?

Dick Sandberg: Yes.

Clerk: The motion carries.

Matt Perry: The appeal is denied. I'm going to take the Chair privilege to say as a person who is very familiar with the Great Streets Program, in fact in this particular one – part of that program I believe is the Great Streets Business District Support Program, they go to great lengths to support creating destination and brand identity. I don't think we had any latitude to work with given the language that we have, but I believe there's an opportunity for the very effective Great Streets Program and its intent to be aligned or maybe the reverse is true, to have the Zoning Code align with the Great Streets Program and I'll leave that editorial comment as it is. So with that the appeal is denied.