

**Item #1:**

**Report Of The November 15, 2011 PCZBA Meeting**

Amendments To Village Code Re: Downtown Signage (*Continued*)

## MEMORANDUM

**TO:** Chairman Phillips and Members of the Long Grove PCZBA

**CC:** James M. Hogue, Village Planner

**FROM:** Marlo Del Percio

**DATE:** November 14, 2011

**RE:** Proposed Sign Code Amendments

### ***CONFIDENTIAL/ATTORNEY-CLIENT PRIVILEGE***

On October 18, 2011, the Plan Commission Zoning Board of Appeals (the "**PCZBA**") Village of Long Grove (the "**Village**") opened a public hearing regarding amendments (the "**Requested Amendment**") to the Village's Zoning Code regarding Signs (the "**Sign Code**") that were requested by the Long Grove Business and Community Partners ("**LGBCP**"). The hearing has been continued to November 15, 2011 for additional consideration. I have reviewed the LGBCP's suggested revisions and identified a number of legal concerns related to the Requested Amendment. This memorandum will highlight the legal concerns and point out the policy questions that are up for consideration in the Requested Amendment. Finally, I understand that LGBCP's expertise does not lie in drafting legislation, so there are some additional concerns regarding the manner in which certain regulations are drafted, and the omission of some text in 5-9-5(F)(2), but those largely nonsubstantive and can be addressed in a revised draft.

#### I. Legal Concerns

A number of legal concerns present themselves in LGBCP's draft of the Requested Amendment, including Constitutional Concerns, issues with unlawful delegation, and the clarity and objectivity of standards established.

The First Amendment to the U.S. Constitution prohibits any law that would abridge the freedom of speech. Since signs, by their nature, are intended to communicate, regulations that the Village enacts relating to signs must not run afoul of the First Amendment. Thus, in reviewing the Requested Amendment, care must be taken to ensure that the suggested revisions to the Sign Code do not unreasonably limit a right to speech. The regulations of concern follow:

- Requirement to remove signs that relate to businesses or products that are not bona fide, as presented. 5-9-5(D)(6)
- Prohibition on the display of certain types of flags. 5-9-5(E)(11)
- Authorization of portable two-sided signs or sandwich boards only by special use permit. 5-9-5(F)(2)(i)
- Regulations regarding political signs. 5-9-5(E)(6)-(7)

The Requested Amendment also unlawfully delegates governmental authority to a private entity. There are certain powers that local governments possess that cannot be delegated to a private entity. Even though the Village Board does delegate some powers, e.g. the powers of review and consideration delegated to the PCZBA, the parameters of the authority delegated and the clear standards for decision-making must be identified. In the Requested Amendment, LGBCP seeks to make itself a partner in the operation and enforcement of the Village's Sign Code. The elements of the Requested Amendment that suggest unlawful delegation follow:

- LGBCP Design Committee approval of self illuminated and neon signs. 5-9-5(D)(1)
- LGBCP Design Committee enforcement of sign maintenance standards. 5-9-5(D)(4)
- General enforcement of Sign Code by LGBCP Design Committee. 5-9-5(D)(8).
- LGBCP Design Committee approval of the number of signs allowed in the Business District. 5-9-5(F)(1)
- LGPCB Design Committee approval of temporary signs. 5-9-5( )(1).
- LGPCB Design Committee review and approval prior to the issuance of a sign permit in the Historic Business District. 5-9-5(F)(3)

For a Village law to be valid and enforceable, the law needs to be clear and with some objective standards for enforcement, or it may too run afoul of the First Amendment. In the Requested Amendment, the LGBCP acknowledges the subjective nature of enforcement and also proposes standards that may be difficult to implement uniformly. In order to draft a lawful and enforceable ordinance, the Village should identify specific standards related to the general policy objectives. Some of the problematic terms include:

- Authorizing the use of neon signs only in an "appropriate environment" and in an "appropriate manner" that will be assessed on a "case by case basis." 5-9-5(D)(1)(b).
- Failing to fully articulate the distinction between general wear and tear from signs in poor condition. 5-9-5(D)(4).
- Authorizing for signs the use of a wood-like or stone-like material but prohibiting materials that have a "plastic or manufactured look and feel." 5-9-5(D)(7).
- Establishing that awning color may not be "obtrusive." 5-9-5(D)(11).

## II. Policy Considerations

Despite the concerns with the legal issues and drafting concerns regarding the Requested Amendment, a number of policy considerations for the PCZBA's consideration were raised. Honing in on these issues will allow Village Staff and the Village Attorneys to draft an ordinance that addresses some of the concerns raised by the LGBCP in a legal and enforceable manner. The Policy issues are outlined below by issue.

### Illuminated Signs

- May business owners have an illuminated open sign as a right?
- If so, are there size, color, or intensity limits?
- If not, may they obtain one through a special use permit?
- Should neon signs ever be permitted?
- If so, under what circumstances?
- Are exceptions to these rules allowed?
- Is the Architectural Commission the appropriate body to review any exceptions to the above rules?

### Maintenance

- What should be done about signs that are in not being maintained?
- What are the elements of a sign that is not being properly maintained?
- What, if any, reporting and enforcing mechanisms should be established?
- Will Village Staff complete inspections?
- How much time would property owners have to rectify violations?

### Materials

- Should the Village establish materials from which signs must be made?
- If so, what are the acceptable materials or visual elements of acceptable signs?

### Enforcement / Penalties

- What is the process through which the terms of the Sign Code will be enforced?
- What, if any, penalties should be imposed for violations?

### Election Signs

- Should fines be imposed for failure to move or properly display election signs after the conclusion of an election?
- Should that fine be imposed on the property owner or the candidate's campaign fund?

### Awnings

- Should the Village regulated awnings?
- If so, what are the desired aesthetic guidelines?
- Should writing or designs be allowed on an awning?
- If the business name appears on an awning, should that count as the business's sign?
- Should the Village limit the number of flags per business?

### Business District Signs

- What should the maximum allowable square footage be for signs?
- Should that vary depending on setbacks?
- Should square feet of double sided signs be calculated by one or both sides?

### Temporary Banner Signage

- What, if any, additional limitations should be placed on temporary banner signs?
- Should any regulations vary by district or type of sign?
- What is the appropriate process for approval?

#### Sandwich / Portable Two-Sided Signs

- What, if any, additional limitations should be placed on sandwich or portable two-sided signs signs?
- Should any regulations vary by district or type of sign?
- Should permit be required?
- If so, what is the appropriate process for approval?

#### Review and Permitting

- Should all signs requiring permits in the Historic Business District require review by the Architectural Board and the Village Board of Trustees?