Cozy Inn, Inc, et al. v. City of Salina, Kansas - Civil Action No. 6:24-cv-01027-TC-ADM

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Exhibit A
Howard Declaration

In the United States District Court
for the
District of Kansas

Cozy Inn, Incorporated, d/b/a The Cozy Inn; Stephen Howard. Plaintiffs, v. **City of Salina, Kansas.** Defendant.	Civil Action No. Declaration of Stephen Howard in Support of Plaintiffs' Motion for Summary Judgment

Declaration of Stephen Howard in Support of Plaintiffs' Motion for Summary Judgment

I, Stephen Howard, have personal knowledge of myself, my activities and my intentions as set out in this Declaration. I verify under penalty of perjury under the laws of the United States of America the following concerning myself, my activities, and my intentions are true and correct, as are the factual statements concerning Cozy Inn, Incorporated, d/b/a The Cozy Inn:

1. The Cozy Inn is small. The dining area is about 192 square feet, and only around 40 square feet are accessible to customers.

2. Inside, The Cozy displays historical pictures and articles, including underneath the countertop where customers sit.

3. The Cozy and I are proud of the murals in Salina.

4. In 2023, I decided that The Cozy's plain-white wall didn't reflect my personality or The Cozy's personality.

5. I wanted to participate in this part of Salina culture and I wanted to paint a mural on The Cozy's side wall.

6. My vision and dream for The Cozy's artwork came from the art all over town.

7. I hired Colin Benson to paint a story that would show my personality and The Cozy's personality.

8. I am a "Sci-Fi" fan and I liked the idea of having a science fiction themed mural at The Cozy.

9. Once completed, the UFO-themed mural will include whimsical hamburger-esque flying saucers piloted by aliens attacking The Cozy with blasts of ketchup and mustard and will read "Don't Fear the Smell!! The Fun is Inside!!"

10. This is what the finished mural will look like.



11. The mural tells a "story" about travelers, both alien and human: I have a map of the United States inside the store that people can place a pin where they're from or foreign visitors can write in marker what country they're from. And they're excited. They've traveled sometimes hundreds of miles, sometimes thousands of miles. They're excited. They're finally here. Well, guess what, even aliens like Cozy's. They traveled light years to get here.

12. The painting, which was partially inspired by a Sci-Fi video I thought was cool. It is expressive artwork and conveys my character and The Cozy's character.

13. The UFO-themed mural is my vision and dream for The Cozy Inn, and part of my heart and soul.

14. I didn't paint the mural to maximize profits.

15. I prefer when customers come inside to order, rather than use the walk-up window, because the walk-up window is not as personal, and the experience of our entertainment is inside. We talk with everybody. If you use the walk-up window, you're just kind of missing the whole point.

16. Because The Cozy only has 6 stools inside, and unlimited space outside, The Cozy is no better off, financially, if people come inside.

17. Having people come inside is more personal, more fun, more enjoyable for myself and the people who come inside, and it is better for Salina's reputation.

18. Colin Benson started painting The Cozy's mural on Friday, November 3, 2023.

19. On Monday, November 6, 2023, City Planner Dustin Herrs told me that I couldn't finish the display even though there had been no public complaints about it and only city officials took issue with the mural at The Cozy.

20. On the morning of November 13, 2023, Salina officials held a meeting with me and Mr. Benson.

21. Salina told me to submit a sign permit.

22. I submitted the completed sign permit application on November 13, 2023.

23. Salina did not respond to the application within the written code's 10-day deadline.

24. Salina failed to provide a written notice or statement of reasons of denial of the sign permit application.

25. I received a letter dated February 8, 2024, from Salina that put the application "requesting approval of an existing painted wall sign/mural" "on-hold until our review of the sign regulations is complete."

26. I did not consent to Salina placing my application on-hold.

27. I am very passionate about my one-of-a-kind UFO-themed mural.

28. I was moved to tears at a City Commission meeting because Salina wouldn't let me finish my mural or explain myself at the Commission meeting.

29. I speak to countless customers a week and no one have ever told me they dislike my design for my UFO-themed mural. Many people have told me that they like the mural.

30. Not being able to finish the mural made me feel like I didn't have a voice.

31. I don't want to alter the mural's content as shown in the rendition shown above.

32. I want to finish what I started. I didn't get to finish my story. I want to paint my wall.

33. I will testify at trial or for other purposes consistent with the contents of this declaration.

Dated: 2-4, 2025

Stephen Howard, individually and on behalf of Cozy Inn, Incorporated, d/b/a The Cozy Inn

Galaxy S22

Exhibit B
Cozy Photos


111 7th St
Salina, Kansas
Google

CULT IN
HAMBURGERS
Don't Fear the Smell!
The Fun is inside!

No Cheese!!
All burgers
served
With onions!

Exhibit C
Cozy Proclamation

Proclamation
Cozy Inn

Whereas, the Cozy Inn was established in 1922 and is celebrating 100 Years of continued operation at its location of 108 N. 7th Street Salina, Kansas;

Whereas, the Cozy Inn founder Bob Kinkel began frying his onion-laden, coin-sized burgers at 108 N. 7th Street;

Whereas, upon Bob Kinkel's passing in 1960, Cozy Inn was owned and operated by his wife Katherine and her husband Richard Pickering. Upon their passing in 1997, it was operated by Max Holthaus, Gregg Boyle, and Monte Shadwick until 2007. Since 2007, Steve and Kris Howard, the current owners and operators have continued the strong tradition of owning and operating the Cozy Inn;

Whereas, the Cozy Inn survived and thrived through the depression of the 30's, local impact of WWII of the 40's and the advent of the fast food market that has been part of the American way of life for the past 60 years;

Whereas, the Cozy Inn has received the honor of recognition as one of the 8 wonders of Kansas Cuisine;

Whereas, the Cozy Inn is known nationally as one of the last remaining six-stool diners in America;

Whereas, the Cozy Inn has been featured on the Travel Channel's "101 Tastiest Places to Chow Down" and as one of "America's Top Ten Hamburgers";

Whereas, the Cozy Inn was picked by USA Today as "Best Burger Joint in Kansas" and has received the Diamond Award from AAA;

Now, therefore I, Trent W. Davis, M.D., Mayor, do hereby proclaim the month of March 2022 as

Cozy Inn Month

and encourage all citizens to support a nationally recognized local institution, which has been a fixture of downtown Salina for 100 years. We wish continued success to current and future caretakers of a local landmark.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Salina, Kansas, to be affixed this 7th day of March, 2022.

THE CITY OF SALINA KANSAS ORGANIZED 1870

_____

Trent W. Davis, M.D., Mayor

CITY OF SALINA, KANSAS
REGULAR MEETING OF THE BOARD OF COMMISSIONERS
March 7, 2022
4:00 p.m.

Mayor Davis asked the Clerk for verification that notice had been sent for today's City Commission meeting. The Clerk replied yes.

The Regular Meeting of the Board of Commissioners was called to order at 4:00 p.m. in Room 107, City-County Building. A roll call was taken followed by the Pledge of Allegiance and a moment of silence.

Those present and comprising a quorum: Mayor Trent W. Davis, M.D. (presiding), Michael L. Hoppock, Greg Lenkiewicz, Bill Longbine and Karl Ryan.

Also present: Mike Schrage, City Manager, Jacob Wood, Deputy City Manager, Shawn Henessee, Assistant City Manager, Greg Bengtson, City Attorney; and JoVonna A. Rutherford, City Clerk.

AWARDS AND PROCLAMATIONS

(3.1) Recognition of March 7th through March 11th, 2022, as Entrepreneurial Week in the city of Salina. Mitch Robinson, Executive Director of the Salina Community Economic Development Organization, read the proclamation and announced related activities.

(3.2) Recognition of the month of March, 2022, as Cozy Inn Month in the city of Salina. Eric Brown, President of the Salina Area Chamber of Commerce, read the proclamation. Steve Howard, owner of Cozy Inn, announced related activities.

PUBLIC HEARINGS AND ITEMS SCHEDULED FOR A CERTAIN TIME

None.

CONSENT AGENDA

(5.1) Approve the minutes of February 28, 2022.

(5.2) Award the bid for Project Number 22013, 2022 Chip Seal, to Circle C Paving and Construction of Goddard in the amount of $149,279.40 with a 5% construction contingency for a total project authorization not to exceed $156,743.37 and authorize the City Manager to execute a contract with Circle C Paving and Construction of Goddard upon fulfillment of all prerequisites under the bid documents.

22-0058 Moved by Commissioner Hoppock, seconded by Commissioner Longbine, to approve consent agenda as presented. Aye: (5). Nay (0). Motion carried.

ADMINISTRATION

(6.1) Approve Resolution No. 22-8024, amending the City of Salina Classified Pay Plan to add a new classification to the wage/salary schedule.

Jeff Hammond, Director of Parks and Recreation, explained the request, fiscal impact and action options.

A discussion followed regarding finding applicants, labor market, contracts, and location and maintenance of downtown bathrooms.

22-0059 Moved by Commissioner Ryan, seconded by Commissioner Lenkiewicz, to approve Resolution No. 22-8024. Aye: (5). Nay (0). Motion carried.

(6.2) Approve Ordinance No. 22-11101, on first reading, amending the Salina Finance Ordinance to remove portions of Section 2-240 and 2-241 to make the establishment and amendment of Petty Cash and Working Cash (Change) funds for all funds except utilities related funds an item actionable by resolution.

Debbie Pack, Director of Finance and Administration, explained the request, fiscal impact and action options.

22-0060 Moved by Commissioner Lenkiewicz, seconded by Commissioner Hoppock, to approve Ordinance No. 22-11101 on first reading. Aye: (5). Nay (0). Motion carried.

DEVELOPMENT BUSINESS

(7.1) Property 6, LLC

(7.1a) Approve Ordinance No. 22-11104, on first reading, amending Section 42-415.2 to add travel center and/or truck stop, short term recreational vehicle parking area accessory to hotel, motel, truck stop or travel plaza and mini warehouses to the list of conditional uses allowed in the South Ninth Street Corridor Overlay District.

(7.2b) Approve Ordinance No. 22-11105, on first reading, changing the zoning district classification from A-1 (Agricultural) zoning district to PC-5 (Planning Service Commercial) zoning district on a 25.10 acre tract of land located at the southwest corner of 9th Street and Water Well Road.

Mike Hoppock recused himself from the meeting.

Dean Andrew, Director of Planning, explained the request, fiscal impact and action options.

A discussion followed which included mini warehouses, Planning Commission denial of mini warehouses, aesthetics of mini warehouses, space for warehouses and RV parking, flood zone and drainage.

Mark Augustine, Property 6, LLC, Salina, Kansas, provided his thoughts on the aesthetics of the proposed project, current use of nearby property, letters of support, sustainable use and the need for additional storage in south Salina.

Additional discussion followed concerning possible actions to be taken by the Governing Body.

Norman Mannel, Salina, Kansas, suggested the planting of trees next to the property in question.

Dalton McDowell, Salina, Kansas, expressed his concern with expansion in south Salina and response time of the fire department.

A brief discussion ensued related to the development process and fire department coverage.

Chad Farber, Salina, Kansas, stated the main concern seemed to be with aesthetics from the interstate and suggested the project could be a benefit to the city.

Further discussion ensued on support of the project and the aesthetics of the project.

22-0061 Moved by Commissioner Ryan, seconded by Commissioner Lenkiewicz, to approve Ordinance No. 22-11104, amended to add mini-warehouses to the list of conditional uses in the South Ninth Street Corridor Overlay District, on first reading. Aye: (4). Nay (0). Motion carried.

22-0062 Moved by Commissioner Ryan, seconded by Commissioner Lenkiewicz, to approve Ordinance No. 22-11105 to include mini-warehouses as a permitted use in the district, on first reading. Aye: (4). Nay (0). Motion carried.

Commissioner Hoppock rejoined the meeting.

OTHER BUSINESS

Commissioner Longbine revisited Resolution No. 22-8027 related to citizens forum and shared a concern with when executive sessions are scheduled. It was discussed that executive sessions were placed at the end of the meeting, as they were not an actual agenda item, and would remain at the end of the meeting.

Commissioner Longbine also acknowledged the loss of life and homes in Reno County over the past weekend.

CITIZENS FORUM

Debrah Corrales, Salina, Kansas, provided information on and referenced articles related to pitbulls.

Norman Mannel, Salina, Kansas, stated his concerns on water shortage.

Dalton McDowell, Salina, Kansas, suggested the use of brine in lieu of salt to treat roads.

Ben Windholz, Salina, Kansas, provided his thoughts on Resolution No. 22-8027, related to citizens forum.

Chad Farber, Salina, Kansas, piggybacked on Mr. Windholz's statements and further provided his thoughts on the matter.

Carol Reed, Salina, Kansas, agreed with Mr. Windholz and Mr. Farber related to Resolution No. 22-8027. Ms. Reed also inquired about an Implicit Bias Test, touched on immoral content of books in the school system and provided a copy of a statute related to promoting obscenity to minors.

Cheri Harp, Salina, Kansas, suggested the community was not concentrating on children and it was detrimental to have immoral books in the school system.

Mayor Davis provided information on submission of written information to the Governing Body.

ADJOURNMENT

22-0063 Moved by Commissioner Ryan, seconded by Commissioner Hoppock, that the regular meeting of the Board of City Commissioners be adjourned. Aye: (5). Nay: (0). Motion carried. The meeting adjourned at 5:34 p.m.

Trent W. Davis, M.D., Mayor

[SEAL]

ATTEST:

JoVonna A. Rutherford, City Clerk

DRAFT

Exhibit D
Howard Deposition Excerpts

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

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COZY INN, INCORPORATED, d/b/a
THE COZY INN; STEPHEN HOWARD,
Plaintiffs,

.

vs. Civil Action No. 6:24-cv-01027-TC-ADM

.

CITY OF SALINA, KANSAS,
Defendant.

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DEPOSITION OF
STEPHEN HOWARD,

taken on behalf of the Defendant, pursuant to Notice to Take Deposition, beginning at 9:07 a.m. on the 7th day of October, 2024, at the law office of Clark, Mize & Linville, 129 South 8th Street, in the City of Salina, County of Saline, and State of Kansas, before Sandra S. Biggs, Kansas CCR No. 0716.

.

Heating -- well, before this, let me back up. After Vo-Tech when I graduated, I started a job in Wichita working as a refrigeration technician. And they laid off all the new people in September.

So I came back to Salina, and one of the guys I graduated with was a manager with McDonald's. And he goes I can get you working here for a while. And so all right. So I started working there, kind of like it. Then I started working -- my hours were set during the day 7 to 1. So in the afternoon, I went to work for Gage's Plumbing and Heating. They went out of business. So I put all my efforts into McDonald's, kind of left that away side.

After 14 years, I decided I didn't want to do that no more, and I got hired on with USD 305 working as maintenance for the school district and spent a month shy of 14 years with them.

And then during this time, about the last ten years from like '97, '98, I was working up at the country club for Max Holthaus. He was one of the guys that owned The Cozy at that time. And for years, he was trying to get me down to The Cozy to manage it, but I wouldn't leave my school district job. And then one night he goes what

about owning it? I go you really want me in there, don't you? He goes you're a perfect fit. So he made it to where I couldn't say no.

Q. All right. So it sounds like you prior to owning the Cozy, you've had some restaurant experience when you were working at McDonald's?

A. Yes. You could almost say I have 50 years in the restaurant industry. My oldest sister, I grew up a couple miles from what they used to call the Nickerson Farms restaurants. And she was 14 when she started working there. I'm six years younger than her, so I've been hanging out up at the restaurant when she was working. And then that was my first job, too, when I turned 14 or 15. And so I've always been in the restaurant industry one way or another.

Q. Okay. And so when did you become the owner of The Cozy?

A. April 7th of 2007.

Q. And did you --

A. It was a -- it was a -- sorry. It was a Monday, either October -- either November -- oh, my God, April 6th. It was a Monday in 2007.

Q. Okay. And that's because Max and -- what did you say Max's last name was?

hearing some hammering. We have some construction going on, and they like to only start the hammering outside of my door when I am on Zoom. So I'll apologize for that in advance. Hopefully, it's not too disrupting.

So when was Andrea made a shareholder of The Cozy?

A. Maybe two years ago September. I can't remember the date.

Q. And why was she brought in as a shareholder?

A. She's going to be my successor.

Q. All right. And you mentioned that Jenni's Liquor, that's in Brookville, Kansas?

A. Yes.

Q. And where do you currently reside?

A. 8822 South Sunnyside Road, Brookville, Kansas.

Q. And let's talk about that. How long have you been living in Brookville, Kansas?

A. Brookville is my high school and my grade school. We didn't live in Brookville ever. We lived in the district. Actually, where I live now, we're not in the district, but we're able to keep my kids -- let me kids graduate there from

Q. Okay. So when someone comes inside, you can talk to them and suggest how many they should have?

A. Yes.

Q. Okay. What about at the ordering window?

A. It is -- at the walk-up window, it's not as personal because you don't get the feel of -- our entertaining is inside. You know, all of us talk with everybody, and the conversations are always appropriate. They are timely. Walk up -- if you use the walk-up window, you're just kind of missing the whole point.

Q. Okay. Do you feel like you're able to upsell better for customers that come inside?

A. Yes.

Q. Okay. Does that increase your sales for customers that come inside?

A. Not always.

Q. Okay. But does it typically?

A. No. Because the walk-up window can get every bit as busy as the inside. And if it's snowing, they're probably going to come inside to order and not the walk-up window which won't be very many because wintertime is slow.

Q. Okay. Well, what about in the summer?

A. Summertime's my busy season, and it's about half and half. I don't know, I guess, what...

Q. Okay. So of your customers, approximately 50 percent use the walk-up window and 50 percent go inside?

A. I don't have any numbers to prove, but just by experience, yeah, 50/50.

Q. Okay. Do you ever track that? I know you said you don't have the numbers, but do you ever track that --

A. No.

Q. -- in your head?

A. No.

Q. No. So it's --

A. I have a very simple cash register. It tells me how many transactions I do and that's it. Doesn't tell me window or inside.

Q. Okay. But you said coming up to the walk-up window is impersonal?

A. Yeah. You're missing the whole point of going to The Cozy Inn.

Q. Okay. Well, tell me about. What's the whole point of going to The Cozy Inn?

A. You go inside, you get tagged right away

Q. Okay. So if someone came -- you're asking people to come inside The Cozy to purchase something, correct?

A. Yes.

Q. Okay. And I mean because it would be -- how would you as a business make money if people just came into The Cozy and just congregated there and didn't buy anything, right?

A. Well, that would be a problem. I don't have very much room.

Q. Okay. What's the square foot for the customers?

A. Maybe 40 square feet.

Q. 40 square feet where the customers can sit?

A. Yeah. I have six stools.

Q. Okay. And another than the six stools, is there really anyplace else for people to hang out inside The Cozy?

A. Behind the stools against the wall.

Q. Okay.

A. I've fit 12 to 15 people in there before.

Q. Okay.

A. Some sitting and most standing.

Q. Okay. So other than the six people who

it's there.

Q. At some point, were you displaying that, though?

A. Oh, yeah.

Q. Okay.

A. Just up until last week somebody knocked it off. I asked one of my people, I said what happened to that picture that was there. And they said, well, it fell and broke. It's in the office.

Q. So I want to talk to you about the painting on the side of The Cozy. And what I'm talking about is the sign that's the subject of this lawsuit?

MR. SHAW: Objection to form.

MS. JOKERST: Well, it wasn't a question. I was telling him what I'm referring to.

BY MS. JOKERST:

Q. When did you first get the idea of painting that side wall at the Cozy?

A. October of last year.

Q. So October of 2023?

A. Yeah.

Q. Okay. And what led to that idea?

A. Well, I had a couple about my age come to

Colin Benson? Tell me about that.

A. Well, I had a contractor doing some work at my house, and I told him I said like to find an artist to paint my north wall. I said, you know, I'd pay 500 bucks for someone to paint it. I had no idea that his boy -- him and his boy's an artist.

Q. Okay. So was that Rick Benson you were talking to?

A. Yes.

Q. Okay. So you told Rick Benson that you wanted to paint the wall?

A. Yes.

Q. Is that right?

A. Yes.

Q. Okay.

A. And I told him I said I'd pay somebody 500 bucks to paint a story on my wall.

Q. Okay. What did Rick Benson say to you then?

A. Nothing. A couple days later Colin showed up at the restaurant, introduced himself and there you go. That's the beginning.

Q. Okay. So when Colin came over and introduced himself, what did you guys talk about?

A. Yes.
BY MS. JOKERST:
Q. Okay. Okay. So why did you include the burger?
A. Because I wanted to.
Q. Okay. Is that because it references the product that's available for sale at The Cozy?
MR. SHAW: Objection to form.
A. I don't know the rules. I don't know the codes. I just wanted to paint a mural. I thought I was falling in line with the City of Salina.
BY MS. JOKERST:
Q. Okay. Well, I'm not asking you about the codes. So we're not there. I'm asking you why you included the burger on the paper that you gave to Colin Benson?
A. It was part of my idea.
Q. Okay. And was your idea to advertise The Cozy?
MR. SHAW: Objection to form.
A. No.
BY MS. JOKERST:
Q. Okay. Then why did you include the burger on that?

Q. You don't remember what you talked about?
A. No. It's been over a year ago.
Q. Okay. Well, not quite a year ago, right, because that's October. It's October now. Well, you've said this painting was your heart and soul, right?
A. In a way.
Q. In a way. Okay.
A. It's a story.
Q. Okay. But it's important to you, right?
A. Yes.
Q. Okay. So weren't the conversations you had with Colin Benson about this painting, weren't those important?
MR. SHAW: Objection to form.
A. Why would I think that I needed to remember that?
BY MS. JOKERST:
Q. Well, usually when something is important it can be memorable. So that's why I was kind of asking you, you know, if these were important. Is there something that might refresh your recollection about the communications you had with Colin if they were in person versus text?
A. No. My wife would tell people I'd forget

Q. Okay. And then on the next page, 347, you stated -- I'll wait till you get there. Sorry. You stated I like it. Wife thinks it's too much. Do you see that?

A. Um-hum, yes.

Q. That's what you told Colin?

A. Yes.

Q. Okay. So you said that on October 31st to Colin, right?

A. Yes.

Q. Okay. So then on November 1st, you said let's go for it to Colin?

A. Yes.

Q. So what changed between October 31st and November 1st?

A. I don't know.

Q. Well, did something happen because you went from saying wife thinks it's too much to let's go for it?

A. Because I liked it. My wife didn't like it.

Q. Okay. So let's scroll back up to 346. And do you have the color copy of this exhibit now?

A. Yes.

was taken on.

Q. Okay. Well, I don't know, either, because I'll represent to you that this was disclosed by you in this case, by your attorneys. So I can't tell you specifically. But when you look at this, does this look like what the painting looks like on your wall right now?

A. I don't know. I see it every day, but I don't know.

Q. Okay. Well, is there a more up-to-date photo of what the wall looks like right now?

A. Not in my possession.

Q. Okay. All right. So let's stay on the photo on page 54 of Exhibit S. Okay. The big burger in the middle. There's no UFO or alien depiction on that, right?

A. Right.

Q. Okay.

A. Not yet.

Q. Not yet, but there's never been a rendering that shows an alien depicted on that one, right?

MR. SHAW: Objection to form.

A. That's the mothership.

BY MS. JOKERST:

Q. Okay. Well, there's no indication that it's anything other than a burger, right?

MR. SHAW: Objection to form.

A. I didn't get to finish my story.

BY MS. JOKERST:

Q. Okay.

A. The mural.

Q. All right. Well, Mr. Howard, that's the burger you drew up and sent to Colin and said this is what I want in that initial rendering, right?

MR. SHAW: Objection to form.

A. I did not draw a burger. I drew a circle.

BY MS. JOKERST:

Q. You drew a circle that was supposed to indicate a burger?

A. Yeah.

Q. Right?

A. Yes.

Q. Okay. And you didn't tell Colin, oh, this is the mothership, right?

A. After the fact, after he started.

Q. After he started?

A. Yes.

Q. Okay. But when you were doing the

depiction of what's on the wall right now?

A. Yes.

Q. Okay. And let's go down to the next page, page 6. It's marked 0065. Do you recognize this photo?

A. Yes.

Q. Okay. What does this photo depict?

A. The inside of my restaurant.

Q. Okay. Is that an accurate depiction of the inside of The Cozy restaurant?

A. Other than the price change.

Q. Okay. Other than that, the stools --

A. Yeah.

Q. -- the countertop, all look the same?

A. Yes.

Q. And I'll move you down to the next page?

MR. SHAW: I'm going to renew my objection to the use of these last two photographs as they were not disclosed in accordance with the scheduling order.

BY MS. JOKERST:

Q. Okay. Mr. Howard, is this -- what is -- what's this photo depicting?

A. Part of my menu board.

Q. Okay. That's a menu board that's on the

Hill Museum on November 13th?

A. I don't remember.

Q. You don't remember. But you do remember going to a meeting at the Smoky Hill Museum?

A. Yes.

Q. Okay. Do you remember who was at that meeting?

A. Maybe.

Q. Okay. There was city personnel at that meeting?

A. Yeah. Lauren Driscoll, Mike Schrage and Brad Anderson, I believe.

Q. Okay. And was Dustin Herrs there?

A. I don't remember.

Q. Okay. Other than city staff, were there other people present?

A. There were.

Q. Okay. Who else was present?

A. My wife.

Q. Okay.

A. And Kris and Grant Johanson.

Q. Okay. Kris and Grant?

A. Um-hum. I think that's it.

Q. Okay. Well, was Colin Benson there?

A. Oh, yeah, he was right beside me.

A. They know what's going on.
Q. Okay.
A. That's about it.
Q. So your employees are aware of what's going on?
A. Yes.
Q. Okay. And were your employees there while Colin was painting the wall sign?
A. I don't remember --
MR. SHAW: Objection to form.
A. -- who was there.
BY MS. JOKERST:
Q. Was he there painting business hours?
A. He started Friday night. I don't remember how early he started Saturday or Sunday but, yeah, he had customers talking to him.
Q. Okay. So customers stopped and talked to him?
A. Yes.
Q. Did any of your employees talk to him?
A. Only when he comes inside to eat.
Q. Okay.
A. They probably talk about tattoos.
Q. Okay. I want to talk about the wall side -- or the painting on the side of the wall. The

come up with a story.

Q. And is that what made you want to create another mural at Jenni's Liquor?

A. Yes.

Q. Okay. Is there any other part of the story that you feel like expressing?

A. No.

Q. Okay. And how do you feel that you have been told you cannot complete the Mural at the Mill Cozy Inn?

A. By voice and letter.

Q. I'm sorry. I didn't hear you.

A. I've been told and gotten a letter.

Q. I mean how does it make you feel when you were told that you could not complete the mural?

A. That I didn't have a voice.

Q. Okay. Why did you decide you wanted to have a mural with burger-esque flying saucers?

A. I'm into Wi-Fi -- Sci-Fi.

Q. Okay. So you like science fiction?

A. Yes.

Q. All right. And so you just liked the idea have having a science fiction themed mural?

A. A few years ago, I had a customer from Salina did a video of aliens landing on -- coming

to Salina in their ships. It's really cool. I think I might have sent it to you, Sam. And then they beam onto the roof of Cozy, and they beam down and then they beam up with burgers and then they fly away.

Q. Okay. And is the Cozy a reference -- is the Cozy Inn mural a reference to travelers?

A. Yes.

Q. Okay. How does it refer to travelers?

A. Okay. I have a map inside the store that people write in -- they pin where they're from or they have -- they write in marker what country they're from. And they're excited. They've traveled sometimes hundreds of miles, sometimes thousands of miles. They're excited. They're finally here. Well, guess what, even aliens like Cozy's. They traveled light years to get here. Over 90 percent of my business are travelers. I don't know if I said that.

Q. And the rendering that was attached to your sign permit application, is that what you desire for Mr. Benson to paint on the side of the wall if he's allowed to complete the mural?

A. Yes.

MR. SHAW: Okay. I have no further

CERTIFICATE

STATE OF KANSAS

COUNTY OF SHAWNEE

I, Sandra S. Biggs, a Certified Court Reporter, Commissioned as such by the Supreme Court of the State of Kansas, and authorized to take depositions and administer oaths within said State pursuant to K.S.A 60-228, certify that the foregoing was reported by stenographic means, which matter was held on the date, and the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of the same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and seal this 17th day of October, 2024.

Sandra S. Biggs

Sandra S. Biggs, C.C.R No. 0716

SANDRA S. BIGGS STATE OF KANSAS CERTIFIED SHORTHAND REPORTER

Exhibit E
City Commission Meeting Transcript

Exhibit A

SALINA CITY COMMISSION MEETING

held on

November 13, 2023

Excerpt Transcribed by

AVANELLE L. SULLIVAN

for Dolginoff & Associates, a
Registered Professional Reporter
Certified in Kansas and Missouri.

APPEARANCES

CITY MANAGER:
Mike Schrage

VICE MAYOR:
Bill Longbine

CITY ATTORNEY:
Greg Bengtson

CITY COMMISSIONERS:

Greg Lenkiewicz
Trent W. Davis, MD
Karl Ryan

DIRECTOR OF COMMUNITY AND DEVELOPMENT SERVICES:

Lauren Driscoll

(ph) indicates a phonetic spelling.

[sic] indicates the text is as stated.

Quoted text is as stated by the speaker.

(The excerpt of the proceedings commenced.)

VICE MAYOR LONGBINE: That brings us to Citizens Forum.

MR. SCHRAGE: If I may -- I need to make sure my microphone is on.

VICE MAYOR LONGBINE: Oh, you have other business?

MR. SCHRAGE: Right.

VICE MAYOR LONGBINE: I was going to skip that.

MR. SCHRAGE: So I have a -- I would like to give you some background on an issue that I'm sure you're aware of that became a topic of conversation over the last week. And that is the Cozy Inn artwork and mural/sign that's been initiated on the -- I guess it would be the north side of their building. So I have some background information for you.

I would tell you that I think staff made first contact with Mr. Howard, who's here on -- the owner and operator of Cozy's is here. Made first contact with him last week and then we met with Mr. Howard and his artist this morning and kind of walked through the

same information that I'm going so share with you at this point.

So -- and it started by acknowledging -- and I understand it's become an emotional issue for some and has been a hot topic of conversation in social media and the radio.

I want to give Mr. Howard credit. He's adamant that that wasn't his doing, that wasn't his initiation, that wasn't his intent. But it did start, you know, kind of a community conversation.

So I want to clarify a couple of things right off the top. The issue is not about the art. The issue is not about the artist. I think there were some comments made that the artist hadn't been approved or the art hadn't been approved. And that's really not what -- what's at play here.

I would tell you as well that there are examples of very similar issues as it relates to what constitutes art, what constitutes a sign, how does free speech get involved, how can signs and art be regulated.

That is a difficult issue that's

playing itself out coast to coast, so not necessarily unique to Salina. The important distinction here relates to commercial speech and our ability to regulate commercial speech or signs and then specifically how we do that by way of our -- the codes that we have in place.

I won't go into great detail, but there's a U.S. Supreme Court case that provided us clear direction, provided the nation clear direction, that sign regulation has to be content neutral. And I think some of you are on the planning commission, and the city commission as we worked our way through that a couple years ago trying to modify our code to be sure that we met that content neutral requirement. So.

And that's important in that we don't get to look at a sign and what it says and what it looks like. We just need to have codes that apply across the board, regardless of any specific content parameters. And so --

And there certainly is a misunderstanding between art and signs and commercial speech. And I would acknowledge

that signs can be artistic, some more artistic than others. This one in particular is very artistic in terms of kind of the theme and where it's headed with the image.

So despite all the emotion and kind of the confusion surrounding it, we do not regulate based on content, aesthetics, the particular business in question nor social media or a petition process. We just have to administer based on the codes that are in effect.

Our codes in this particular case have been in effect since 1966. It doesn't mean that they can't be changed, but the codes that we currently have, have been in effect since 1966 and we regulate based on size.

So by zoning category, that then dictates, kind of, the mathematical formula that gets applied that then determines the maximum size of signs in total, not just an individual sign, but kind of the aggregate size of those signs that's allowed.

And I am going to call on Lauren Driscoll to walk you through the specifics as it relates to Cozy's. And so that, then, kind

of sets size limits in proportion to the building or more specifically the building frontage.

So in this particular case, Cozy currently has three permitted signs, and they use up 84 percent of their allowable space by our current code. The proposed sign, in combination with those other three signs, would put them at about nine times the allowable size. So it really becomes a function of the size of that artwork and signage relative to our current code provisions.

In terms of possible next steps, we discussed these with Mr. Howard and his artist. First and foremost is submitting a sign application, so we have the specifics of what they intend and we can take a look at that relative to the code.

But we do know just from what's on the sign and the renderings that have been shared, it's going to be more than just submitting an application for approval. We do have a disconnect between what they intend and what our code currently allows.

A couple of other options that are just generally available in the zoning code are applying for a variance or proposing a code amendment. We discussed the variance process, and there is a statutory set of criteria that the board of zoning adjustment has to reach findings on all five of them, that they're met.

And that makes it a little -- makes it problematic in terms of this particular instance. It has to be unique and -- there has to be something unique in terms of an insurmountable challenge or something that the code might not have taken into account. There has to be an undue hardship -- some of those standards are pretty high bars.

And we told Mr. Howard, we are not saying you can't apply for a variance. We're not saying what the outcome might be. But knowing what we know about kind of that criteria and our history, it doesn't seem likely that a variance would be granted.

In fact, staff shared that our only knowledge of a sign variance that has been approved relates to a location where the

ground falls off so quickly from the roadway, that it had to be allowed to be taller than the code might have allowed just to get in a normal scale relative to the driving surface.

The other option, the code amendment, we have a process whereby someone can make application or request a code amendment. Looking at it in first blush, probably to accommodate what's being -- what Mr. Howard desires, we need to increase the allowable square footage nine to 10 times what our code currently says or we would need to come up with some allowance to cover an entire -- a wall pretty much in its entirety or possibly even all four sides of the building in its entirety.

And that starts to get very customized, very detailed. And the key factor there is, it has to be applicable across the board. We can't -- we're not in a position to create a carve-out specific to a particular business.

And so whatever we come up with would need to allow the proposed sign. It would need to apply equally to others in a similar

situation, again, regardless of its content, regardless of its aesthetics, regardless of the specific business.

And I would reiterate, it's all on the basis of a commercial message. So while we may have one sign that feels much more artistic than another, these size limits could just be pricing and a more typical business sign text than kind of an art -- artistic flair.

I don't -- I think it's lost on you; that's a pretty significant policy decision. It's going to take some work. We will -- we're prepared to staff that through in terms of code drafting, running it through the necessary committees for recommendation. But then it ultimately would end up back at the city commission level for consideration of an amendment to our code.

As I said, we're -- we're definitely willing to do that. It won't be quick. I think there is a lot that we might be able to learn from other communities, and if they've been able to find a creative way to come up with codes that kind of address the balance

that we're trying to strike here.

Part of the conversation will be while -- while it may be acceptable in this particular location, does it open it up for other locations. And so we would need to provide -- spend some time kind of looking at all the possible scenarios so that the planning commission and the city commission have a good understanding of what that code change might allow.

And so we have learned -- had some contacts and planning. And we'd already identified the need to take a look at this and had it on our plan of work for 2024. It wasn't necessarily on the plan of work for the coming week or before year end, but she is aware of some planners that specialize in this. Reached out to one of them last week to try to see if we can expedite some of that conversation.

We're hoping to have a proposal back in the next week or two. But the preliminary conversation -- Lauren can speak to this better than I can -- is their schedule is such that their -- even if we engaged them and can

get something in place, it's probably a couple months out before they're able to, you know, work on our specific project.

The last thing that I would say -- then I want to turn it over to Lauren, and then I know Mr. Howard is here as well -- is part of the conversation we had with the artist and Mr. Howard this morning was last week, staff's contact with him was not intended to be enforcement, per se, with a violation citation, but just agree to pause on proceeding with the project until we can sort through the codes, until we can have the conversation we had this morning.

I think that's still a possibility. The artist indicated this morning their preference was, they washed the building in preparation for painting. They don't necessarily want to leave it half finished. And if it's going to take into the spring before they have an answer, their preference is to paint it white and just prep it to start over again.

So. That's certainly probably the cleanest way from a code standpoint. But that

wasn't something that we said that they necessarily had to do.

With that, what I'd like to do is give Lauren an opportunity to walk you through the math and the code provision specific to the Cozy sign as a little bit of background.

MR. HOWARD: Can I just say --

MR. LONGBINE: Well, now, let Ms. Driscoll -- let Ms. Driscoll bring the code.

MS. DRISCOLL: Are you sure?

VICE MAYOR LONGBINE: Yeah. No, you don't need to leave, Mr. Howard. We just got procedure here.

MR. HOWARD: Okay.

VICE MAYOR LONGBINE: Go ahead, Lauren.

MS. DRISCOLL: Jacob, if you wouldn't mind popping that analysis up. Staff learned about the sign late on Sunday night, contacted Mr. Howard Monday morning and just asked if we could have -- if he could pause in -- in the creation of his sign so that we could get a chance to look at it.

Without an application, we had no measurements, things like that. Needed a

chance to look at it. And could already see on social media a lot of people had already seen it, loved it, wanted more of it.

So we also looked and needed a little time to research to see if there are any exceptions to -- somebody asked us if really, you know, institutional-type buildings get an exception to sign codes. How -- how do you give that kind of variance. Did some research -- that's why we asked for the pause so that we could meet with him this morning.

MR. SCHRAGE: Sorry to interrupt, but just to clarify. Sunday -- not yesterday --

MS. DRISCOLL: Correct.

MR. SCHRAGE: -- Sunday, the week prior.

MS. DRISCOLL: Right. Sunday before. But without a lot of details, staff needed just a little time to do some research, which is what we had asked him and he said that that was fine.

As part of some of that research, also quick -- did a side analysis. This is typically something we would do when we would get a new sign permit in the door. In this

case the question is, is it a sign.

If you look at our definition of a sign, a sign is anything in writing including letters, words and numbers -- there are letters involved in this application -- or in this particular sign -- pictoral representation. This includes illustrations or decorations; that is also part of this sign.

And these are calculated to attract the attention of the public or any figures, similar in character which, one, could include being painted on -- so they are painted on to the wall; two, used to announce, direct attention to or advertise something. It's welcoming you to come into the building -- that's part of the sign -- and is not located inside the building. It is of course on the exterior side wall of the structure.

So from that pure definition, this starts to tick all the boxes that make it a sign, before we even get into a discussion of commercial speech, noncommercial speech.

When we look at sign regulation, we go to the sign code, which is in the city

zoning code, Chapter 42. And then we look at what zone the property falls into.

So I've gotten quite a few calls over the last few days of people asking, well, what about that one? What about that sign? What about that sign?

Well, they're in different zoning districts. So the rules are going to be different for those.

This particular property is in C4, which is the central business district downtown. And beyond things that are typical to any zoning district, identifying functional types of signs, structural permits, numbers of signs, most notable by most people when it comes to signage is the maximum gross surface area. So how big can the sign be.

We also do a collective surface area. So you can have a couple smaller signs that could equal that full surface area amount of signage. So, for instance, in the downtown, you can have 3 square feet of signage for every foot of frontage.

Well, the Cozy building is a very little building. It only has 20.8 feet -- so

let's round it up to 21 -- even to 21 linear feet of frontage. So if we take 21 times 3, you get 63 square feet.

So by the time we take their north facing wall sign, which is 24 square feet, their 7th Street projecting sign, which is 24 square feet and then their 7th Street awning sign, which is another 4.88 square feet, you get 52.88 square feet, leaving us just over 10 square feet of remaining surface area of signage allowed for the building.

In Cozy'a situation, if you take the sign that's on the side of the building and you do the square footage analysis on that, it's approximately 528 square feet, which is significantly greater than the allotted amount in the C4 district. So that's really the challenge here.

And I would love to say from the staff perspective, if there was one line that I could change and make this simple, I really would. But one of the things that makes the downtown unique is there's kind of a domino effect; right? We have a lot of different shaped buildings. We have very limited or no

setbacks in many situations.

So how the buildings work together, the scale of messaging, of signage, really does matter in that environment. Plus the C4 is also very pedestrian focused.

Where, for instance, you know, driving down 9th Street, that's not a pedestrian environment. But everything in the C4 is scaled for both car and people. So that also has to do with some of our sign regulations and kind of how they came to be.

So we did have this conversation with Mr. Howard this morning. We kind of saw this coming, the excitement of all the art with Boom Festival has gotten people looking at blank walls differently. But that doesn't necessarily change the definition of a sign.

Even if we changed our definition, we still have to be mindful of kind of what the Supreme Court decisions have done to reflect that sign code and how murals and signs can exist cohesively in a community.

And it takes a bigger, broader conversation. So we had planned to start that this spring knowing we had a lot of creative

minds wanting to share, but also wanting to get everybody on the same page of what the outcome would look like.

In reaching out to specialists -- and I will say, if we could do this in-house right now, I would. But this is a very unique and specialized area of code. It also, in order to do it in a time efficient manner, you kind of need to -- this needs to be your -- your thing.

It's kind of like when you hire a specialist, a subject-matter expert to do something. They can do it quicker than other people. You know, that's -- that's their system or that's the tool that they always work on.

And we want this done in a timely manner. Clearly it's kind of come to a precipice where people are noticing this. And I do think bringing a subject matter expert in -- a couple of them that I've talked to said, you know, two, three months they could have a good public process that lets everybody have a chance to speak on this, to find code that will work in the community and get

something to bring forward to you all.

So I think that's pretty reasonable. I'm hoping they can start January, February at the latest. But I do think that this is a situation in which it would be reasonable to get somebody who could really kind of help us move this along in addition to everything else we got going on.

MR. SCHRAGE: And if I could add one thing to that. In addition to being the subject matter expert, I think this a really good example where it's going to take some creativity on our part. It's going to take some balancing of considerations.

And someone that's been in these similar conversations in multiple communities and facilitated, you know, kind of public discussions about that I think can add a lot of value versus us just kind of working in a vacuum trying to figure this out from scratch.

MS. DRISCOLL: Well, and they're going to have to turn visual materials around quickly. I mean, in amongst everything that's coming in and out of the office every day, somebody stopping, and every time we talk

about a scaling of something or, you know, how -- how a different change in rules would look, you're going to need to kind of create new visuals to go over with the group to say, okay, well, that's what it looks like here, that's what it looks like here and that's what it looks like here in the C4.

Is that what you were hoping this rule change would do? And so people are going to have to see those visuals. And somebody being able to produce those in a timely manner is also part of kind of what helps move this along, rather than staff in amongst phone calls and other day-to-day things, trying to produce those materials, plus research code, plus rewrite and do all of those others things.

MR. SCHRAGE: So we -- in what little time we have had, we brainstormed a little bit about, okay, what's unique about that location. Could it be acceptable.

And I think the conversation was not just absolute objection to it, but it then quickly becomes, well, how do we write something that that's acceptable but it

doesn't expand beyond what the community might have in mind for other building faces in the downtown.

I think we can get there. But I do think an outside subject matter expert could certainly help us.

COMMISSIONER RYAN: Well, I would agree you're taking the right approach to dive in, given the proliferation of mural art everywhere -- and it seems Salina is really interested in that, we're kind of ahead of things in trying to develop that.

But I'm -- yeah, I would be anxious to hear what the better brains are doing with that. Because I can understand the city's point of view of --

I mean, if this code is as old as 1966, it deserves to be reviewed in this modern concept. Because I can see dividing a signage like this -- I mean, look at any Apple ad in the world that -- it's very much art but still a portion of it communicates the commercial message.

I could see much of the mural part be considered art, and then focus on the actual

portion that's the message as the commercial aspect. So a fine line there between artistic minds and people that administer code, so.

MS. DRISCOLL: And I think representation is one thing also that you'll see when you read case law about this is, expressly related solely to the economic interest, to the speaker and the audience, or speech that possesses commercial transaction when the -- I'm going to use the coffee house for instance. This is actually from a Supreme Court case.

If the coffee house has a dove with an olive branch and it says the word "peace" on the side of it, that -- that's not a sign. Because even though the word "peace" is there, you're not selling peace inside. I mean, coffee may do that for some people.

But in general, the dove, the olive branch, the peace are not part of a commercial transaction that would take place in that building or draw you to that building for a commercial transaction.

Where if we had a steaming cup of coffee and a coffee pot on the side, those are

things that draw you in to the use of that building. Even without a word, that illustration can suggest that commercial transaction.

There's actually case law example of a mural, which is actually a sign, of a bunch of puppies playing in a field. It's across from a dog park. And the mural happens to be on a building that is a doggy day care. Never said a word. But it's dogs; they do doggy day care. That was deemed commercial signage.

VICE MAYOR LONGBINE: I think it's -- go ahead.

COMMISSIONER RYAN: I'm sorry. I was just kind of following up on my -- are there communities that have public boards or entities that decide what's an artistic aspect and what would be a commercial? I mean, that seems very hard to me to distinguish in given instances.

MS. DRISCOLL: I do. I think that is one of the biggest challenges. I think part of what we have to focus on is really location, size, and scale of signage and work from there, rather than what is the content or

does it look like art, does it feel like art. Because that's definitely where we get into the trouble zone. And that's definitely where, you know, cities that try to regulate to that messaging side of things typically end up getting sued.

MR. SCHRAGE: Yeah. You probably recall time, place, and manner is a typical refrain of, well, you can relate. And then Reed v Gilbert is another U.S. Supreme Court case that very clearly makes it known that you're not supposed to regulate based on content. So.

MS. DRISCOLL: But the other option is we may end up having to have a process for the murals. So it's like if you can't say this is one thing, do you identify the others? I mean, that's part of the conversation I think needs to be had.

Sometimes saying something isn't something -- maybe you need a process to identify what something is. So. I think there's some different things we have to look at.

COMMISSIONER DAVIS: Just from a

definition standpoint, if this same painting was, let's say, on the side of one of the grain elevators, downtown, away from where it is now, would it -- then be considered commercial -- commercial signage?

MR. SCHRAGE: And the reason I laugh, is now we're into off-premise signs. There are -- there is signage that's not on a -- at the actual business location that directs attention elsewhere.

COMMISSIONER DAVIS: Yeah, I kind of remember that discussion from --

MR. SCHRAGE: So --

COMMISSIONER DAVIS: Okay. I'll withdraw that question.

MR. SCHRAGE: But it -- you know, there's a lot of what-ifs. There certainly is a circumstance where a steaming cup of coffee on the side of a coffee house is a sign and a steaming cup of coffee on the other side of town unrelated to anything going on might not be a sign.

You know, as we -- as we looked at murals, we had some conversation about this very question. And the first reaction was,

well, if it includes lettering, or if it includes wording.

But it really -- if the wording's not commercial in any way or doesn't have an attachment to a commercial operation, that in and of itself isn't a disqualifier.

COMMISSIONER DAVIS: Case in point being the Target logo. You know, some of the buildings, they don't even put the word "Target" on it.

MR. SCHRAGE: Right.

COMMISSIONER DAVIS: They just have --

MR. SCHRAGE: Well, Lauren's made the example in prior conversations, the gas pump and the different icons that you see on directional signs on the side of the interstate. No words, but it's still conveying a message.

VICE MAYOR LONGBINE: Well, I think if this had been anything other than a 101-year old historic institution, it wouldn't be an issue.

And, you know, I'm sorry Mr. Howard wouldn't stay and join the conversation here.

But I really believe if he intended to get in on the whole mural trend -- and it is -- you pointed out well the distinction between art and murals and commercial sign.

So I guess my thoughts all along as I've studied this issue is what would it take for him to turn this into a mural rather than a sign.

MR. SCHRAGE: So as I prepared my overview, I shared it with legal counsel to just make sure I wasn't saying anything incorrectly. And as might be expected, they responded two to three levels deeper in terms of legal analysis and court cases.

And I say all that because we end -- that ends up being a legal question of, if there are no words but it's still, you know, related to the business activity of the building, I think there's case law out there that says that's still a commercial message and it's still a sign.

And then the added difficulty is -- and there's examples in court cases of this as well -- as soon as you start that treatment, whatever it might be, for one intended

location or purpose, then the expectation is, I'm the same as them. I deserve the same treatment.

And that's the precedent-setting nature that we have to really pay attention to as we revise the code.

COMMISSIONER DAVIS: Then I think the other flip side of that is, you know -- and I do -- I did drive by and it's a really nice drawing. But we don't spend our time regulating things that we like. Our codes make us be impartial when we have to deal with things that we don't like.

And if everybody in town liked it, we'd probably push it through and -- but the next time -- you know, this may be a poor example to use. But, you know, if a sexually explicit supply store wanted to come by and they had, you know, pictures of their paraphernalia on the side of the building, judging from comments during our last election, a lot of folks would be upset over that.

Or if we had same-sex couples, you know, with a rainbow picture on the side of

the building saying, you know, Salina, friendly to the LGBTQ community, folks -- you know, we'd have folks coming up on the other side saying, well, how can you allow that? I mean, that's clearly a sign.

So, you know, whatever we do, it's got to be something that will stand the test, no matter who's coming up to the podium. And it makes it more difficult -- I think it's a beautiful sign, but.

And I've said it before, we have rules for a reason. There are times -- you know, if a rule always has to be overridden or we give exceptions, then there's probably something wrong with the rule.

But we even need to look at finding a way to change the rule. But, again, you know, you have to understand that someone else that you don't like may come by and use that same -- same rule.

MR. SCHRAGE: All right. So building on that hypothetical just a little bit, without additional clarification, allowing one building to have 100 percent of the side wall as a sign, we -- you could do your frontage on

Santa Fe, a hundred percent a sign.

I don't think that's the intent. And that's -- those are the kind of things that when we make a code amendment, we need to parse out so that we don't have unintended consequences.

COMMISSIONER DAVIS: And, you know, if we wanted to have a sign frontage district, you know, where the front of every building had to be a sign, you know, so it looked like you weren't going into a store but you were going into a sign, we could do that. I mean, what is it -- which city in Texas is Weird -- Austin?

MR. SCHRAGE: Keep Austin Weird.

COMMISSIONER DAVIS: Austin and Portland would probably take objection to us stealing their fun. But, again, that just has to be the nature of that particular district.

MR. SCHRAGE: It's not lost on staff, this is a result of the enthusiasm and the energy that is the mural festival. And speaking with Mr. Howard, I'm confident that he viewed it as his mural and didn't make a distinction between it being a sign in our

estimation and it being a mural.

And I have vague knowledge to the artist, that -- his artwork is high energy. You know, it -- it pops. We just got to find a way to balance that with the sign code.

VICE MAYOR LONGBINE: Well, I think we should be able to work through this without bringing in outside consultants. It shouldn't be that complicated.

MR. SCHRAGE: I don't -- you might find us bringing a consultant in on this one.

VICE MAYOR LONGBINE: I do agree with Commissioner Davis' point, though, that, you know, we got these ordinances and regulations and we need to be consistent. You know, someone could put something very derogatory or offensive to society as a whole, and that's why we have these ordinances.

COMMISSIONER DAVIS: And I guess even then we can't prevent. All we can do is regulate the size of the sign.

COMMISSIONER LENKIEWICZ: It's a bit of a quandry. And I -- coming back to the subject matter, expert -- I mean, you mentioned -- I'm sorry. I did not mean to do

that to you. But it sounds like it will expedite the situation, which is what we want to see happen.

I mean, I can't speak for the other members of the Commission, but I'm getting a general sensibility of we want to work with this business owner. We want to figure out if there is any middle ground, which sounds very questionable at this point. We'd like to get there.

But, you know, for the general public, this sensibility that we're just up here, you know, thumbs up, thumbs down and, you know, this is art, this is not art, I mean, it's a lot more complicated than that.

And, unfortunately, we find ourselves in a situation where I think we all appreciate the art. But we are bound by -- by laws that we -- you know, we're a governing body and that we -- we're -- we can't just arbitrarily decide, yes, this rule we're not going to enforce, and, you know, this rule we're going to apply, and there's the sense of fairness and uniformity to how we do things.

And it's really not a good spot to be

right now, to be honest. I don't like this. And it reminds me a lot of my law enforcement years, a lot of similarities. But unfortunately, that's part of our job and it's going to take time. And hopefully we find some middle ground.

But the concept of private property rights and, hey, this is something I own and I want to do what I will with it. That's not lost on me either, as a -- as a business owner. I get it. It's just we are -- we're in a bit of a quandary, I'll say it again.

COMMISSIONER DAVIS: If we had a different set of rules for downtown or if we called it an arts district or whatever, we would not be able to have a separate board decide the artistic merits. It would still -- you'd still have to have a regulation -- not necessarily worded like this, but it would still be you either fit or you don't.

MR. SCHRAGE: We do have a design review board that applies some architectural and aesthetic standards within -- in that district. But that's about as far as I'm comfortable going without some legal advice

beyond that.

It certainly isn't -- as Commissioner Lenkiewicz pointed out, it's not thumbs up, thumb down on the particular art. It's --

COMMISSIONER DAVIS: Just the structure and appearance of the building.

MR. SCHRAGE: -- some broader guidance and is it within that guidance.

MS. DRISCOLL: Well, boards and commissions make their decisions based on the criteria that's outlined in code. So when they make a decision, you have to be able to tie findings back to that.

So the body finds that as per this section of code, it did not meet it. The body finds it did meet that section of code. So it's never really arbitrary, right, when the board reviews things. I mean, there is criteria which they make the decision to.

So when we say, like, can we have a board that decides if it's art or not art, that's a great example of can you really find that criteria. That's where we stick to time, place, and manner.

The board can decide, is that, you

know, the right size for that space. Is that the right material for that space.

When we get into downtowns, we start talking about, you know, historic materials, historic architecture. And that's kind of a unique line that we walk in our downtown. We're not a purist when it comes to historical integrity like some downtowns which is -- that's -- we have a lot of cool stuff going on, which means we can bring some other things in. But you still have to be mindful, of some of those components.

So those are things that can be part of that decision. But as far as kind of content or, you know, the flavor of the message, I mean, outside of outright profanity -- Mr. Bengtson?

MR. BENGTSON: Well, if I may, Vice Mayor and commissioners, to all the points being made, most of what a municipality or city regulates is subject to a relative -- relatively simple test of whether there is a nexus between the regulation and a legitimate public purpose. Most of the code is subject to that sort of test.

When you get into First Amendment regulation, anything that is protected by First Amendment, it gets more specific. The Supreme Court has told us now when you are evaluating anything in the commercial speech category, it undergoes what is called an intermediary -- intermediate scrutiny level.

It's higher than that just rational nexus. There has to be a specific public purpose. It has to be narrowly tailored to meet that. That's the type of analysis that under -- that -- or critique that anything that you do that regulates commercial speech would undergo if challenged.

Now, we know also, however, that when you're looking at art as a form of expression that has been determined to be protected under the First Amendment, that undergoes what is called a strict scrutiny. It's a higher level test. So that's the sort of distinctions that Ms. Driscoll is speaking of.

And I think the only other point I would make, to your point Vice Mayor, understand I'm not sure if your thought was related to cost or time or whatever it might

have been. But the only thing I would say, we are in an area where we, as your local general counsel recognize, particularly with both the speed and accuracy with which we would like to address this, that at least from the legal standpoint, I think there are efficiencies even in terms of cost of having the specialized expert handling those sorts of questions rather than you all having to wonder if we've figured that out or not.

So, you know, I think there are efficiencies. And I know from Ms. Driscoll's work at state and national levels, she has reason to be familiar with folks who are expert in these areas. And from our standpoint as legal counsel, we welcome that sort of expertise on such a -- such an important set of issues.

VICE MAYOR LONGBINE: What's the commission's thoughts on that? Bring a consultant in?

COMMISSIONER RYAN: No. I'm completely on board with a consultant, yeah. I think that there are people that have been following this law for periods of time and

that it's important that we have their wisdom and experience. And I'm sure it will be much cheaper than us, you know, plowing a new road.

I mean, I have a lot of confidence in our staff in figuring any kind of problem out and providing remedies. But it looks like we'll get much quicker answers if we buy some expertise.

COMMISSIONER DAVIS: I agree. And that doesn't mean that creative minds in town can't still work up some other solutions.

MS. DRISCOLL: Oh, definitely. And, I mean, one of the things that takes a little time vers, you know, me sitting in my office just going one line at a time, is that we need public process. I mean, there are definitely a group of stakeholders here. They're artists. They're downtown business owners. They're downtown building owners. There's nondowntown businesses and buildings.

So, I mean, this is -- this is something that we're seeing not just downtown but in the other areas. And I think to have time to have conversations with those folks and ask, you know, how are these rules feeling

and fitting as we've changed as a community over the last few years is an important part of that process. So definitely getting those creative minds to the table.

VICE MAYOR LONGBINE: Well, I did learn a lot from the PowerPoint presentation that was forwarded to us and things I hadn't thought of. So this is a learning experience for all of us, I think.

MS. DRISCOLL: And it's -- to Greg's point, it's also like an ever-changing field. I mean, every time somebody gets sued, a different city, that's a different interpretation of that case law.

So that's the other thing is having somebody who's doing this day in and day out, following and applying those things. And there's a -- I will say from 20-some years of experience, there's a difference between having read it and read somebody else's code, then trying to borrow pieces of that and put that into your own, vers somebody who has applied this in other places and can kind of come in and say, well, here's several different examples; how do they apply to your

place, which can -- can be very helpful.

And sometimes just a new set of eyes to see things differently than we have before.

VICE MAYOR LONGBINE: Well, I hope patience can prevail. This really did take off. And I want to remind people, this had nothing to do with the city collecting permit fees.

MS. DRISCOLL: No. And I have -- I will say we have not issued a violation notice. We simply called and asked for a brief pause so we could research and asked for a meeting. That is the sum total of it.

This morning we met with the business owner like we would any other business owner in town, wanted to talk through these things, and came in willing to talk about how the code could be different.

Still haven't issued a violation notice. Haven't -- haven't done any of those things. Had a normal conversation.

In fact, as I was coming down the stairs, Mr. Howard did drop off his permit along with his application fee. We'll use that to kind of be in the system, work through

it to see, you know, if he'd like to move forward with that. But at least that's on record.

And as we go forward with the ordinance changes, if he'd like to wait and see how that applies, we can do that as well.

VICE MAYOR LONGBINE: Well, I hope citizens realize that a lot has been put into this already. And we want to see it work out and be successful. I think I can speak for a lot of citizens that we'd just like it to be worked out. So.

UNIDENTIFIED SPEAKER: I think we're doing great things here in town. And I look forward to the collaborative aspect of this. Certainly, our value set here in Salina as midwesterners is different than Seattle or in Florida or D.C. So I think it's important we have this -- conversations and do what's right for our place here.

MS. DRISCOLL: Hm-hmm.

VICE MAYOR LONGBINE: Anything else?

MR. SCHRAGE: That was longer than I expected but good conversation.

VICE MAYOR LONGBINE: It was.

MR. SCHRAGE: So we'll keep moving forward.

VICE MAYOR LONGBINE: Yes, it was. Okay. That will bring us to Citizen's Forum.

Anything that's not on the agenda, welcome to come and share and keep your comments three minutes.

(The excerpt of the proceedings concluded.)

C E R T I F I C A T E

I, Avanelle L. Sullivan, a Certified Shorthand Reporter of the State of Kansas, do hereby certify that I appeared at the time and place first hereinbefore set forth, that I took down in shorthand the entire proceedings had at said time and place, and that the foregoing constitutes a true, correct, and complete transcript of my said shorthand notes.

Witness my hand and seal this 16th day of November, 2023.

Avanelle Sullivan
State of Kansas
Certified Shorthand Reporter

Avanelle L. Sullivan
Certified Shorthand Reporter
State of Kansas

Exhibit F
Mural Photos

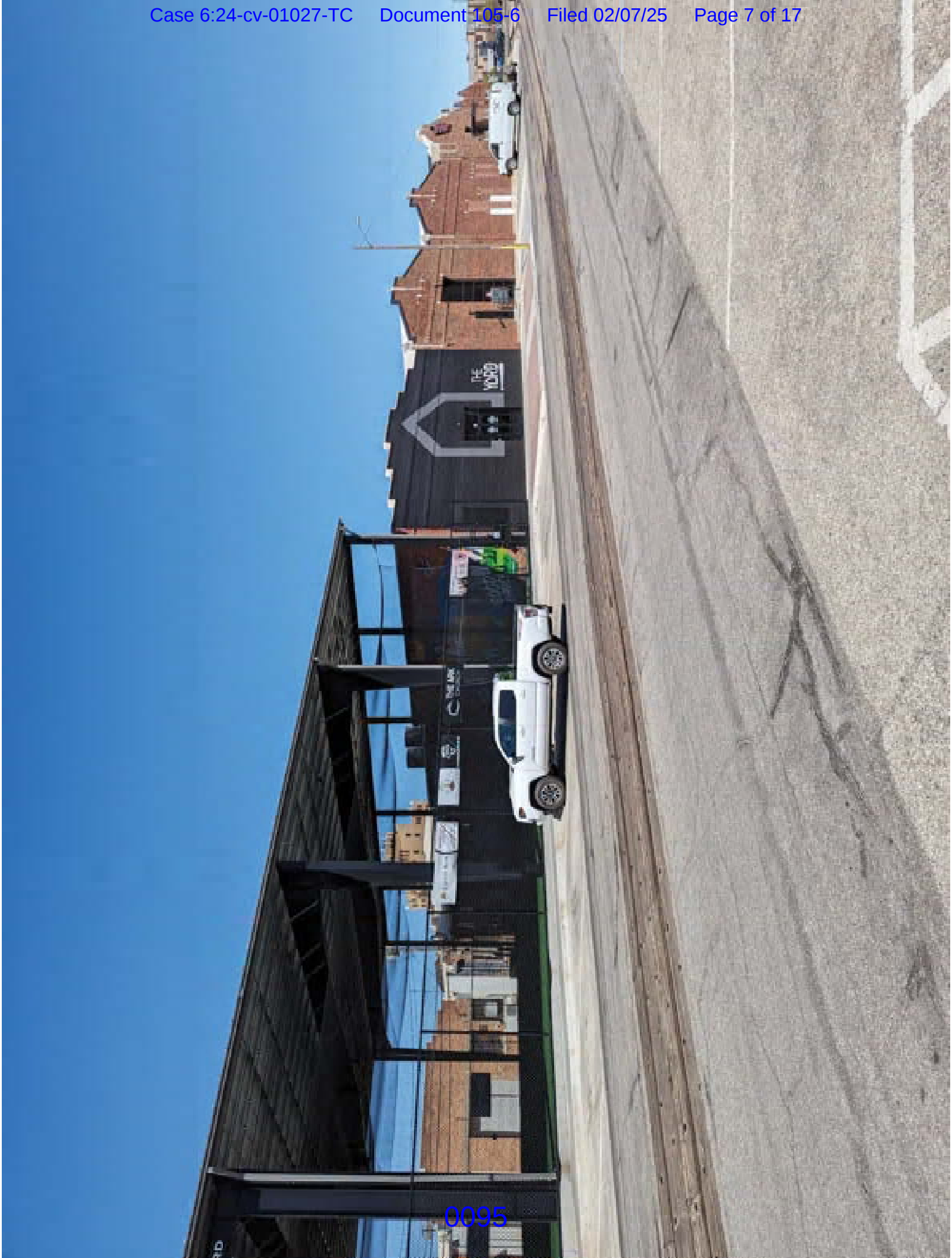

STOP

KU
SCHOOL OF MEDICINE
SCHOOL OF NURSING
SALINA
The University of Kansas




MAGIC
LEAGUE
GARDENS
Bolivia


A Famous
Trade Mark
Over
300000000 bags
sold last year
10¢
GENUINE
"BULL" DURHAM
TOBACCO
Thos Cusack



HUTTON

Schlotzsky's
PEOPLE
who love food
are always
THE BEST
PEOPLE
FARMERS MARKET
EVERY SATURDAY
FOOD
GOOD
FARM
SPORTS

SHARP TRAINING CENTER
SUPPLEMENTS


The Stiefel Theatre for the Performing Arts
STAGE DOOR





Case 6:24-cv-01027-TC Document 105-6 Filed 02/07/25 Page 14 of 17
0123

3 UP
3 DOWN
MAJOR
LEAGUE
CITIZENS

THE ORIGINAL Grande
TACOS & BURRITOS

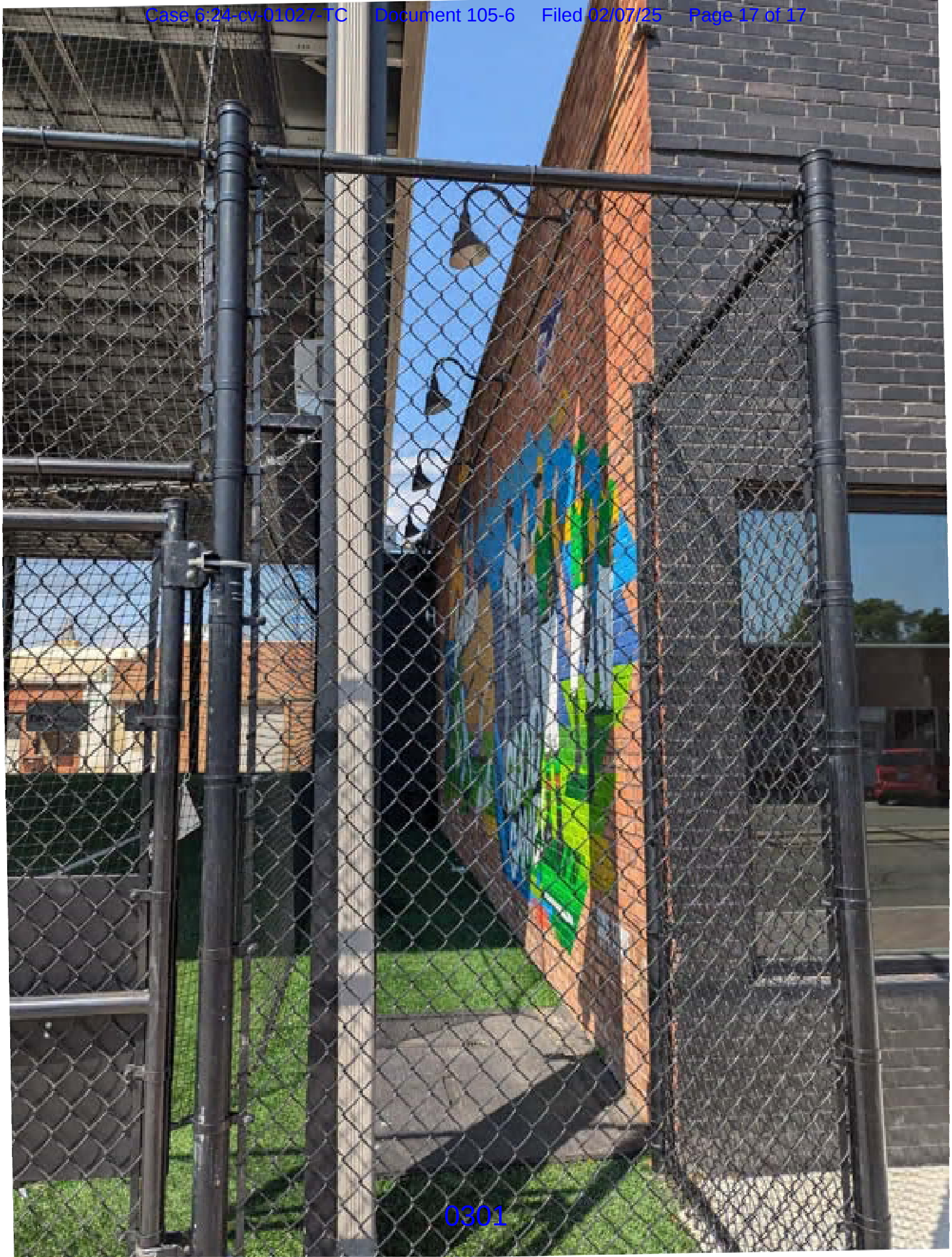


Exhibit G
Anderson
Deposition Excerpts

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

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COZY INN, INCORPORATED, d/b/a
THE COZY INN; STEPHEN HOWARD,
Plaintiffs,

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vs. Civil Action No. 6:24-cv-01027-TC-ADM

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CITY OF SALINA, KANSAS,
Defendant.

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DEPOSITION OF
LAWRENCE BRADLEY ANDERSON,

taken on behalf of the Plaintiffs, pursuant to Notice to Take Deposition, beginning at 9:01 p.m. on the 12th day of September, 2024, at Clark, Mize & Linville, 129 S. 8th Street, in the City of Salina, County of Saline, and State of Kansas, before Sandra S. Biggs, Kansas CCR No. 0716.

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possible of both public and private projects that are -- might be of interest to the public in the greater downtown area.

BY MR. SHAW:

Q. Okay. So it's safe to say that not everything listed on here was either funded or organized by your department. Is that correct?

MS. JOKERST: Object to form.

A. That is correct.

BY MR. SHAW:

Q. Okay. Do you see in paragraph 15 where it makes reference to something called the Salina Kanvas Project?

A. Yes.

Q. Do you know what the Salina Kanvas Project is?

A. Could you be more specific?

Q. Are you familiar with what this project does?

A. I'm familiar with the administrative organization of the Salina Kanvas Project and then one of their subsidiaries that they work under with the Boom! mural festival.

Q. Okay.

A. In terms of what exactly they do, no.

Q. Okay. Do you know who runs the Salina Kanvas Project?

A. I'm familiar with the team of three individuals, but the CEO at the local business that first conceived the Kanvas Project.

Q. Is that CEO you're referring to, is that Travis Young?

A. Yes, it is.

Q. Okay. And who are the other individuals you referenced there?

A. Two of his employees, Tanner Colvin and Eric Montoy.

Q. Okay. And do they all work for some business called Vortex Global?

A. Yes.

Q. Okay. Has Salina Kanvas Project funded the painting of murals around the City of Salina?

MS. JOKERST: Object to form.

A. Yes.

BY MR. SHAW:

Q. Okay.

A. As far as -- yes, I think they're responsible for that, yes.

Q. Has any funding from the City of Salina gone to assist in any of their projects?

project through our foundation.

Q. Okay. So if I understand it, there's -- I believe you said it was the Salina Arts & Humanities Foundation. And then there's the -- was it Greater Salina Arts?

A. Community Foundation.

Q. Community Foundation. Okay. And that 501(c)(3) is what accepted donations for the Boom! festival, and your office through the foundation just kind of gave administrative support to that?

A. That is correct.

Q. Okay. Thank you. Going back to paragraph 15 here, it references the Mural at the Mill. Are you familiar with that mural?

A. Yes, I am.

Q. Okay. And that was funded by Salina Kanvas Project?

A. Yes.

Q. Okay. And in paragraph seven here, do you see where it makes reference to the 2022 Boom!?

A. Yes.

Q. Is that referencing the 2022 Boom! festival?

MS. JOKERST: Object to form and

foundation.

A. Not specifically.

BY MR. SHAW:

Q. Okay. Do you know what department?

A. Development Services.

Q. Okay. All right. Shift gears now to talk specifically about The Cozy Inn. When did you first learn about the mural on the side of The Cozy Inn?

MS. JOKERST: Object to form.

A. I don't remember the specific date, but I remember one of two things happening first. I either saw a picture on social media of the work in progress, or on a downtown drive, I came down 7th Street and saw it first and then saw it on social media. But those two things happened at about -- within hours of each other. I just don't remember --

BY MR. SHAW:

Q. Okay.

A. -- which order.

Q. It's my understanding that your office is like a hundred yards or so away from The Cozy Inn. Is that correct?

A. That is correct.

recall, you said you don't know who initiated it. Is that correct?

A. Correct. I'm pretty sure that I initiated the inquiry.

Q. Okay.

A. The same we would on any other business that might have a mutual impact.

Q. Got it. And so if Exhibit 7 is with Leslie Bishop, is it then fair to say that Exhibit 6 would be between you and Lauren Driscoll?

A. Yes.

Q. Okay. Why did you inform those two individuals?

A. I informed Lauren because that -- she is the person responsible for the staff that we rely on to provide us feedback on projects that might be in violation of either a city code or to get guidance on proper procedures to follow, and so that was the reason I reached out to her.

I reached out to Leslie because we work closely, as some of the text flow indicated, on other ancillary projects, including Artwork Alley. Leslie was involved as the business liaison to the businesses where we were going to paint and/or to help keep area merchants informed of our use of

to reach Colin and work with SDI, was just to be of help for a staff that had a lot of -- a lot of things in the air at that time. And so having known Steve for a number of years, I reached out to see if I could be of any assistance or help diffuse some of the negativity that was going on around the notice to suspend any further work on the mural.

Q. Okay. Do you see here where you -- the sentence where it says he just wants his vision and dream to be permitted?

A. Yes.

Q. And vision and dream are in quotation marks. What did he describe his vision and dream as being?

MS. JOKERST: Object to form and foundation.

A. Again, I can't remember kind of the introductory thing that led to our conversation -- or to that comment, but he just said why can't you just let me paint what I want to paint. This is my vision and this is my dream for The Cozy Inn, and Colin has captured what I wanted to say. And you've got art all over town. Why can't this, you know, be there. And so that's where the vision

and dream came. He was very passionate about this work and said similar things in two other meetings that I attended on -- one other meeting, I guess, that I attended that he said a similar thing.

BY MR. SHAW:

Q. Is it fair to say that Mr. Howard believed that this was artwork?

MS. JOKERST: Object to form and foundation.

A. I don't know what he -- yes, I think he may have considered it to be art.

BY MR. SHAW:

Q. Do you believe he was trying to express some of his character and personality and ideas through artwork on the wall?

MS. JOKERST: Object to form and foundation.

A. I can't speak to his character or personality.

BY MR. SHAW:

Q. Okay.

A. That wasn't ever made clear.

Q. You mention here in the e-mail that Steve wanted to have some friends attend Monday's meeting. Was that a reference to the Monday

MS. JOKERST: Object to form.

A. The mural entitled Symphony of Sunflowers is located on the right side of the -- of the illustration and is parallel with the bottom frame of the photograph and the top.

BY MR. SHAW:

Q. Okay.

A. And it kind of contains five large sunflowers, leaves and some birds, I think.

Q. All right. If you could go to Exhibit 28 which would be the last one in your binder.

A. Okay.

Q. Does this exhibit depict a larger photograph of Symphony of Sunflowers?

A. Yes, it does.

Q. And in addition to the sunflowers you described earlier, does it also contain music notes?

A. Yes.

Q. Okay. Do you know what building this mural is painted on?

A. What do you mean by what building?

Q. Do you know what goes on inside this building?

MS. JOKERST: Object to form and

foundation.

A. I don't know specifically what happens inside that building. I know next door is a symphony rehearsal hall.

BY MR. SHAW:

Q. Okay.

A. And I've used the back of that building. We used it as a store room for our Artwork Alley paint storage, but I don't recall that I've ever been in that building.

Q. Okay.

A. I think there may be a studio of some kind, a music studio possibly, but I can't say for sure.

Q. Okay. Do you know who owns that building?

MS. JOKERST: Object to form and foundation.

A. I believe it's owned by Gus and Hannah Applequist.

BY MR. SHAW:

Q. Who are they?

A. Gus is a -- well, it was formally -- I don't know that he plays now, but he owns Fili Creative, a multi-media video production firm in

Salina, and Hannah is a percussionist with the Salina Symphony. And I believe she also has some private students.

Q. Okay. And the private students that she has, do those lessons take place in this building with the mural on it?

MS. JOKERST: Object to form and foundation.

A. I don't know where she teaches her private students or if she even has any now. I haven't kept up with that.

BY MR. SHAW:

Q. You said you believed a music studio of some sort was present in this building. Is that correct?

MS. JOKERST: Object to form and foundation.

A. Yes.

BY MR. SHAW:

Q. Would the musical notes in this mural relate to that business?

MS. JOKERST: Object to form and foundation.

A. I am thankfully not a musician, and I can't read a note. I just love listening to

BY MR. SHAW:

Q. Okay. All right. Let's move on to Exhibit 16.

A. Okay. 16. Okay. This looks like a collection of screenshots from the Salina Arts & Humanities public art resource pages at our website.

Q. Okay. And does this exhibit feature a specific piece of public art?

A. It does.

Q. And what piece of public art is that?

MS. JOKERST: Object to form.

A. It references a photo mural at Fire Station No. 2.

BY MR. SHAW:

Q. Okay. And is this one of the pieces of art that is like actually in the Salina Arts & Humanities Department's portfolio, I guess would be the word?

MS. JOKERST: Form.

A. Yes.

BY MR. SHAW:

Q. Okay. And so this was owned and funded by Salina Arts & Humanities?

MS. JOKERST: Object to form.

Q. I'm sorry. I wanted the picture of the Mural at the Mill, not the article about it. Let's go back to Exhibit 2. Sorry about that.

A. 2?

Q. Yeah.

A. Okay. Okay.

Q. And then in paragraph 2, that depicts -- I'm sorry. I'm all mixed up. Give me one second.

MS. JOKERST: What exhibit number are you on?

BY MR. SHAW:

Q. Let me just start this over. You're familiar with the Mural at the Mill, correct?

A. Yes, I am.

Q. Do you know if any business activity is currently occurring at that building?

A. I am aware that the building is vacant and not engaged in a commercial activity.

Q. And the Mural at the Mill depicts children playing Ring Around The Rosie. Is that correct?

MS. JOKERST: Object to form.

A. That is correct.

BY MR. SHAW:

CERTIFICATE

STATE OF KANSAS

COUNTY OF SHAWNEE

I, Sandra S. Biggs, a Certified Court Reporter, Commissioned as such by the Supreme Court of the State of Kansas, and authorized to take depositions and administer oaths within said State pursuant to K.S.A 60-228, certify that the foregoing was reported by stenographic means, which matter was held on the date, and the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of the same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and seal this 20th day of September, 2024.

Sandra S. Biggs

Sandra S. Biggs, C.C.R No. 0716

SANDRA S. BIGGS STATE OF KANSAS CERTIFIED SHORTHAND REPORTER

Exhibit H
Windholz
Deposition Excerpts

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

COZY INN, INCORPORATED, d/b/a
THE COZY INN; STEPHEN HOWARD
Plaintiffs,

vs. Civil Action No. 6:24-cv-01027-TC-ADM

CITY OF SALINA, KANSAS,
Defendant.

DEPOSITION OF
ANDREA WINDHOLZ,

taken on behalf of the Defendant, pursuant to Notice to Take Deposition, beginning at 2:00 p.m. on the 10th day of October, 2024, at Clark, Mize & Linville, 129 S. 8th Street, in the City of Salina, County of Saline, and State of Kansas, before Sandra S. Biggs, Kansas CCR No. 0716.

come into The Cozy is to make a sale?

MR. SHAW: Objection to form.

A. We just -- we don't really -- we don't really look for people to come in and purchase anything. We want them to come in and see the history within Salina. Like we are one of Salina's oldest running businesses, one of Salina's oldest restaurants. We want people to come in and see our history. And then, also, we encourage them to shop downtown. We tell them all the time like we have an amazing ice cream shop right around the corner. We have really cute boutiques. We tell people all the time about our local brewery right around the corner from us. So we just -- we really want them to just come stop in and see what Salina has to offer.

BY MS. JOKERST:

Q. When customers come into The Cozy, do you encourage them to buy a burger?

A. If they come in and they're like -- kind of like, oh, we just ate, blah, blah, blah, and we're like how about if you guys -- I mean we'll give you a burger on us. You're here, you should try, see what we're all about, see what people talk about. We don't encourage them to purchase,

no. We like -- we will give a burger to them. We won't make them purchase it most of the time. Like we'll just give it to them to try.

Q. Okay. But if everyone came into The Cozy and you gave them a free burger, how would that affect The Cozy's business?

A. We don't offer it to everyone. If we're busy, busy and don't have time to do that, then we won't obviously offer it. But if they come in and they're like, oh, we're just looking. We'll be like okay. Well, let us know if we can get you anything. We obviously don't give a free burger to everyone that comes in. It's just like when we're slow and we're talking to people and they're like, oh, we just came in to look. And we're like okay. Well, you know, this is what we're about, whatnot. And they're like, oh, we just ate. And then we can offer it. If they turn it down, they turn it down. But if they would like a burger to munch on and we're not busy at all and there's no one in the store, we'll do it that way. But we don't give them to everyone.

Q. Okay. I'm going to talk a little bit about the merchandise sales at The Cozy. How much merchandise on average does The Cozy sell each

A. I'm sure it was shortly -- shortly after.

Q. Okay. Did your dad ask you -- well, let me ask this question. Did your dad show you any renderings of what the display was supposed to look like before it was painted on the wall?

A. No.

Q. Okay. Did your dad ask you for any input, for your input on the display?

MR. SHAW: Objection to form.

A. No.

BY MS. JOKERST:

Q. But from your post on Facebook, and I don't want to put words in your mouth, but was it your opinion that you thought the city was wrong for enforcing the sign code against that display on the north wall. Is that right?

MR. SHAW: Objection to form.

A. I -- I mean I -- we didn't know there was a sign code when we started this.

BY MS. JOKERST:

Q. Okay. But then you learned there was a sign code?

MR. SHAW: Objection to form.

A. Yeah. Eventually, we did learn. We didn't know it was there, because we saw all the

others that were going around downtown and we just wanted to be a part of it.

BY MS. JOKERST:

Q. Okay. Were you involved in your dad's Certificate of Compatibility application back in 2021 for the sign awning?

A. No, because I was not in Salina.

Q. Okay. So let's see. When were you not in Salina? What years were you out of town?

A. 2017 to 2022.

Q. Okay. And where were you residing then?

A. Ellis County.

Q. Okay. How far away from Salina is that?

A. About an hour and a half.

Q. Okay. So during that time, were you not working at The Cozy?

A. I know at the beginning of the times of me being out there like 2017 to '19-ish, I did go back and forth every and again to work just for some extra cash. But other than that, no, I did not work there.

Q. Okay. And your parents own Jenni's Liquor. Is that right?

MR. SHAW: Objection to form.

A. Yes, they do.

CERTIFICATE

STATE OF KANSAS

COUNTY OF SHAWNEE

I, Sandra S. Biggs, a Certified Court Reporter, Commissioned as such by the Supreme Court of the State of Kansas, and authorized to take depositions and administer oaths within said State pursuant to K.S.A 60-228, certify that the foregoing was reported by stenographic means, which matter was held on the date, and the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of the same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and seal this 21st day of October, 2024.

SANDRA S. BIGGS STATE OF KANSAS CERTIFIED SHORTHAND REPORTER

Sandra S. Biggs

Sandra S. Biggs, C.C.R No. 0716

Exhibit I
Schrage Email
11/8/23

Message

From: mike.schrage@salina.org [mike.schrage@salina.org]
Sent: 11/9/2023 5:17:40 PM
To: Bill.Longbine@salina.org; greglenkiewicz@gmail.com; mike@landtitlesalina.com; karlryan@ryanmortuary.com; twdavis22@gmail.com
CC: jacob.wood@salina.org; Shawn.Henessee@salina.org
Subject: Cozy Inn Wall Sign #2
Attachments: Cozy Inn Code Summary.docx; APA-Ohio Sign Presentation 9-23.pdf; NH Article.pdf

Mayor Hoppock & City Commissioners:

Staff was in contact with Mr. Howard multiple times again today and thought that we had gained his understanding that we would meet with him on Monday to discuss the issue and options further. Lauren was recently contacted by KWCH requesting her to go on camera following their interview with Mr. Howard; she ultimately spoke with them by phone; we have been interviewed by Salina311 and we have seen social media posts indicating that Mr. Howard will be going on KSAL tomorrow morning.

Our intended message is that this question is not unique to Salina (see attached article). We regulate the size of commercial signs through a permit process. We were not contacted in advance (Mr. Howard asserts that it is a mural not a sign). The proposed sign covers the majority of the wall of his building and far exceeds the size limits currently allowed by our code (see attached code summary). We are willing to work with Mr. Howard, but this is going to be a code revision and policy decision that will take some time. We have scheduled a meeting with Mr. Howard to start those conversations Monday of next week.

IMPORTANT NOTE: Sharp Performance in the NE corner of 9th and Elm (north of the library) has a large wall sign that did not go through any type of permit process and has been unintentionally overlooked in terms of code enforcement.

I recently spoke with Mr. Howard. As expected, he views it as a mural and feels he was just joining in on the mural activity taking place in the downtown. He also indicated he does not do any kind of social media and he is trying to "go soft" in his interviews with the media suggesting he thinks we will be pleased with his comments.

Lauren has reached out to a consultant who is a planner and an attorney with a specialization in this topic who has assisted communities throughout the Midwest including Omaha. She will be submitting a proposal for our consideration. I have attached a slide show that she presented recently at a planning conference. I haven't attached the presentation as a proposes solution or an on-point discussion of our issue at hand. My primary points in attaching the presentation are that this is not unique to Salina, there are several legal considerations, it is very nuanced and complex and outside consulting would be very helpful if we want to quickly (a few months) develop a policy amendment that is similarly nuanced and takes in to account Salina specific feedback and direction.

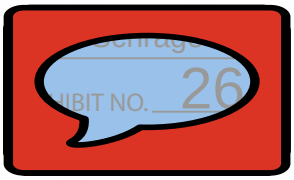
Lauren is prepared to provide an overview of this issue during Other Business on Monday.

You are certainly welcome to contact me on my cell Friday and over the weekend.

As is our standard advice to the Governing Body related to avoiding interactive communications, this message is intended to share information of general interest to the Governing Body. I have included all Commissioners on this email distribution list to be sure they have the same information. Please, do not initiate interactive communications amongst Commissioners since that would be a violation of the Kansas Open Meetings Act.

Sincerely,

Mike Schrage
City Manager



City of Salina, Kansas
300 West Ash, Room 202
P.O. Box 736
Salina, KS 67402-0736

Phone: 785-309-5700
Fax: 785-309-5711
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Website: www.salina-ks.gov

The Cozy Inn Sign Analysis

Sign Definitions

Sec. 42-764. Sign.

Sign is any writing (including letters, words or numerals), pictorial representation (including illustrations or decorations), emblem (including devices, symbols, or trademarks), flag, banner, streamer, pennant, string of lights, or display calculated to attract the attention of the public, or any other figure of similar character which:

(1) Is a structure or any part thereof, or a portable display, or is attached to, painted on, or in any other manner represented on a building or other structure or on the ground;
(2) Is used to announce, direct attention to, or advertise; and
(3) Is not located inside a building.

Sec. 42-768. Sign, business.

Business sign is a sign which directs attention to a business or profession conducted, or to a commodity or service sold, offered or manufactured, or an entertainment offered, on the premises where the sign is located or to which it is affixed.

Sec. 42-781. Sign, wall.

Wall sign is a sign fastened to or painted on a wall of a building or structure in such a manner that the wall becomes merely the supporting structure or forms the background surface, and which does not project more than twelve (12) inches from such building.

C-4 Sign Regulations

Sec. 42-521. C-4 commercial districts.

The following sign regulations shall apply in the C-4 central business districts:

(1) *Functional types permitted.* Any type listed in section 42-506, except that advertising signs for other than special public events sponsored by governmental, philanthropic and nonprofit organizations shall be prohibited in the C-4 district.

(2) *Structural types permitted.* Any type listed in section 42-507, except that mobile signs and roof signs shall be prohibited in the C-4 district.

(3) *Number of signs permitted.* In the C-4 district, four (4) signs per business with a maximum of ten (10) signs per zoning lot; provided, however, the following additional restrictions shall apply:
   a. No more than one (1) projecting sign or ground/pole sign shall be allowed per street frontage.
   b. Ground/pole signs shall be allowed only on zoning lots without buildings or those with buildings having a front yard setback of ten (10) feet or more.
   c. Ground/pole signs and projecting signs shall not be allowed in combination along the same street frontage.

(4) *Maximum gross surface area:*

b. In the C-4 district, three (3) square feet of sign area for each lineal foot of building frontage for allowable signage other than a ground/pole sign or a projecting sign; where no building frontage exists, one (1) square foot of sign area for each lineal foot of street frontage. Irrespective of building or street frontage, no property or zoning lot shall be restricted to less than thirty-six (36) square feet of sign area. No more than sixty-seven (67) percent of allowable sign area may be displayed on any building wall or street frontage. In regards to projecting signs and ground/ pole signs, the following maximum area limitations shall apply:

Building Frontage	Projecting Signs*	Ground/Pole Signs
25 feet or less	30 sq. ft.	45 sq. ft.
26—50 feet	36 sq. ft.	54 sq. ft.
51 feet or more	48 sq. ft.	72 sq. ft.

*The maximum area for a projecting sign on a building wall without street frontage shall be four (4) square feet.

(5) *Maximum height.* Ground/pole signs may not exceed thirty (30) feet in height above grade. Projecting or wall signs may not project above the lowest point of the roof of the structure to which it is attached.

The Cozy Inn Information and Background

The subject property is legally described as the West 44.4 feet of the South 20.8 feet of Lot 103 on Seventh Street in the Original Town (now City) of Salina and addressed as 108 North 7th Street.

The subject property is owned by Steven Howard, he is also the owner and proprietor of the business within the building known as The Cozy Inn. The Cozy Inn Restaurant was one of the earliest known prototypes for a fast food "Hamburger Joint" in the State. The small diner-type restaurant has operated continuously from this location since opening in 1922. The utilitarian commercial building is one story and constructed of masonry with a white-painted stucco finish. Its most recognizable feature is a trademark red neon sign that hangs above the front façade on North 7th Street. The original 1922 interior, with grill, bar and five stools remains relatively intact. The restaurant and its simple hamburger and soda fare have gained notoriety over the years and have become a community icon.

The Cozy Inn occupies a property that is 20.8 feet in width and 44.4 feet in depth facing N. 7th Street. The property lines coincide with the building's exterior walls. The restaurant is bounded on the south by the old Public Utilities Building, at 110-120 W. Iron, and on the north and east by a six foot walkway and City Parking Lot 6A. The parking lot with landscaping, lighting and service areas was constructed by the City in 1986 as part of the Downtown Revitalization project.

In 2003, the DRB approved a Certificate of Compatibility (5-0) for the design and location of the new walk-up window, awning, signs, lighting and bench. Because the off-premise seating area would occur on public property, the DRB could only make recommendations regarding the proposed seating area. Other locations for the seating area where also evaluated. The DRB voted (5-0) to recommend to that a License Agreement be approved with The Cozy Inn to allow an outdoor seating area along N. 7th Street. The Salina City Commission approved a License Agreement with The Cozy Inn on **August 11, 2003** which authorized The Cozy Inn to utilize the 50 ft. planter area along the east side of North 7th Street as an outdoor seating area.

In 2022, the DRB approved a Certificate of Compatibility (5-0) for the installation of a new awning on the west façade of the Cozy Inn building. The awning included a 4.88 sq. ft. sign on it.

Existing Conditions

Current Allowable Sign Area: 21 ft. x 3 sq. ft. = 63 sq. ft. of allowable sign area and four (4) total signs allowed.

Current Signage:

1. North facing wall sign: 24.00 sq. ft.
2. 7th Street projection sign: 24.00 sq. ft.
3. 7th Street awning sign: 4.88 sq. ft.

Total Sign Area: 52.88 sq. ft.

The Cozy Inn has the ability to install a fourth (their limit is 4) sign with no more than 10.12 sq. ft. of area.

Proposed Hamburger Sign Analysis

The proposed hamburger sign on the north wall of The Cozy Inn is approximately 528 sq. ft. This would put The Cozy Inn in noncompliance as it would have approximately 581 sq. ft. of total sign area which is 518 sq. ft. over the allowable sign area.



FLAGS & MURALS OH MY!

CHALLENGING SIGN ISSUES POST-REED

2023 APA-Ohio State Conference

AGENDA

How did we get here and what is going in the courts?



How can we deal with the tricky sign issues like flags, murals, and holiday decorations?



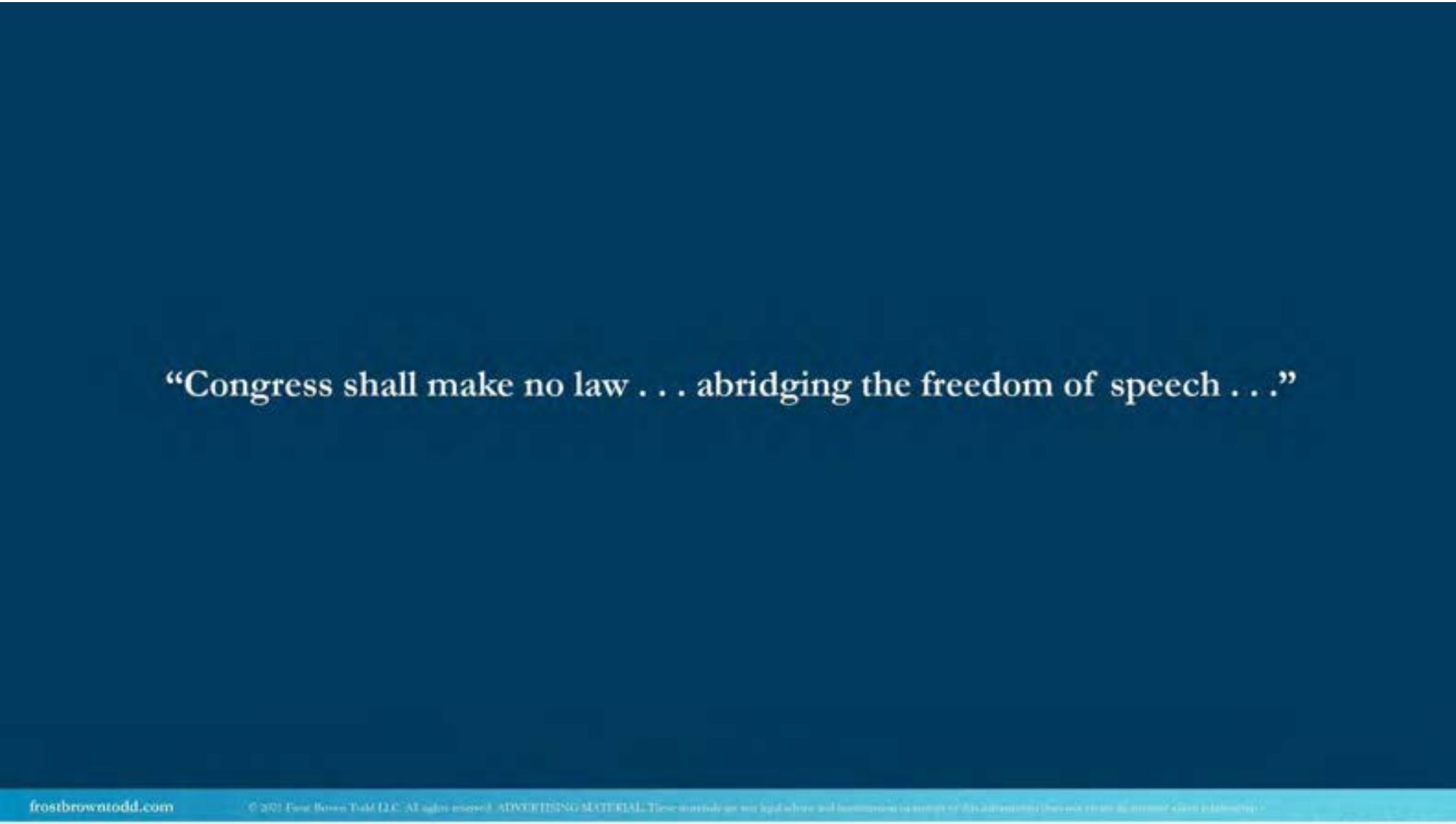
"It is truly a Herculean task to wade through the mire of First Amendment opinions to ascertain the state of the law relating to sign regulations."

Granite State Outdoor Advertising, Inc. v. Clearwater, 213 F. Supp. 2d 1312 (M.D. Fla. 2002).

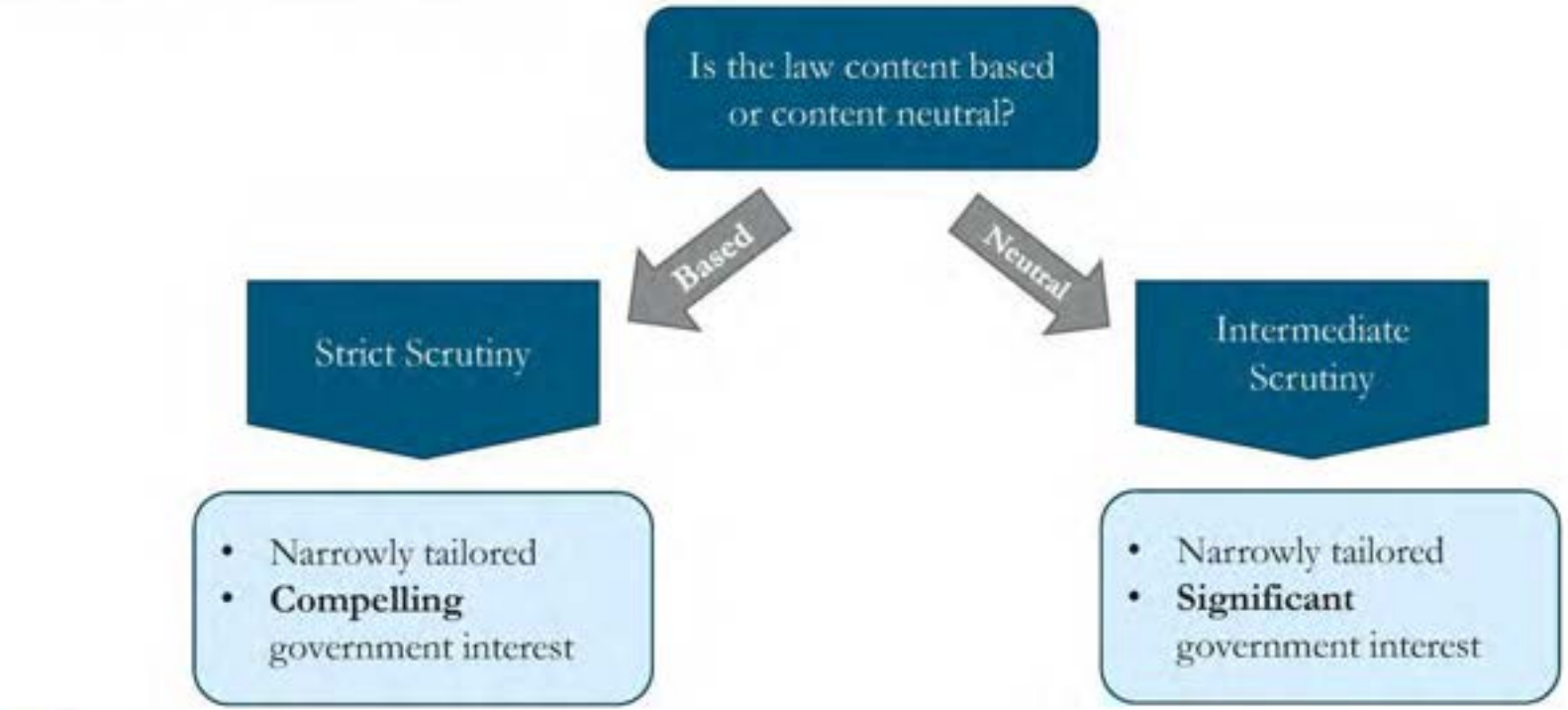




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"Congress shall make no law . . . abridging the freedom of speech . . ."
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Judicial Review of Speech Regulations



Usually unconstitutional

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Reed v. City of Gilbert, Arizona

- SCOTUS, June 2015.
- Permit required for ALL signs but several exempted categories:
  - Political signs.
  - Ideological signs.
  - Temporary directional signs.
- "Some facial distinctions based on a message are obvious . . . Others are more subtle, defining regulated speech by its function or purpose."
- Content-based → strict scrutiny.



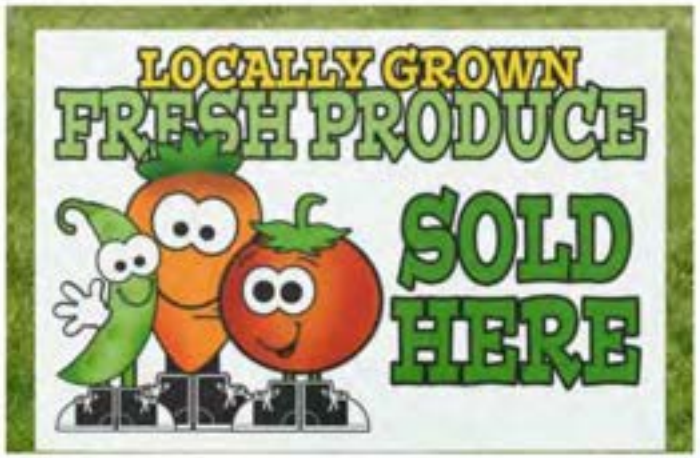


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City of Austin, Texas v. Reagan National Advertising, LLC

- SCOTUS, April 2022.
- On-premises v. off-premises signs.
- Not content based.
- "Unlike the regulations at issue in *Reed*, the City's off-premises distinction requires an examination of speech only in service of drawing **neutral, location-based lines. It is agnostic as to content.**"
- Content neutral → Intermediate scrutiny.

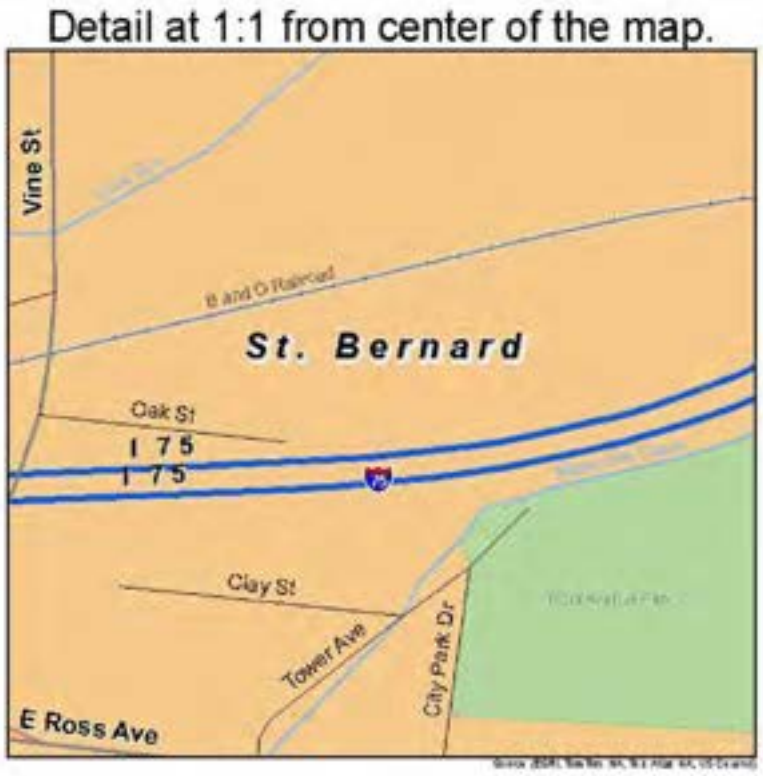




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Norton Outdoor Advertising, Inc. v. Village of St. Bernard, Ohio

- S.D. Ohio, June 2022.
- Sign regulation distinguished between on-premises and off-premises signs.
- Village's safety and aesthetics goals were substantial government interests.
- The sign regulations are designed to "protect the safety and general welfare of the public who travel I-75 within the Village."
- In *City of Austin*, the Supreme Court concluded that on/off-premises distinctions are content-neutral.



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LaCroix v. Town of Fort Myers Beach, Florida



- 11th Circuit 2022.
- "Laundry list" of prohibited signs, including "portable" signs.
- "There is no dispute that portable, handheld signs often convey **political, religious, or personal** messages."
- Highly protected speech.
- No alternative channels of communication.
- Content neutral, but still unconstitutional.

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Willson v. City of Bel-Nor, Missouri

- E.D. Missouri, 2020.
- One yard sign and one flag per residence.
- No window or wall signs.
- Expansive definition of "sign."
- Overbroad and not narrowly tailored.
- Under the ordinance, all banned:
  - Christmas lights.
  - Happy birthday balloons on mailbox.
  - Security system sticker on window.
  - "Welcome Home" banner.



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CITY000235

The bottom line.

- Categorizing types of speech can get you into trouble.
- Leave open "ample" channels of communication.
- Examine your sign laws: do they prohibit more than intended?

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WENDY E. MOELLER, FAICP



WENDY E. MOELLER, FAICP

Principal and Owner

Compass Point Planning





NOW WHAT?

You have the legal background, which is critical to understanding the risks…but now but?

Even with the legal restrictions, there is still a lot you can't do.



Keep in mind…

1. **There is no perfect sign code model.**
2. There is always going to be a little grey area.

PERMANENT SIGNS

THE EASY PART



A permanent sign is a structure much like a fence, shed, or building – Establish the types allowed

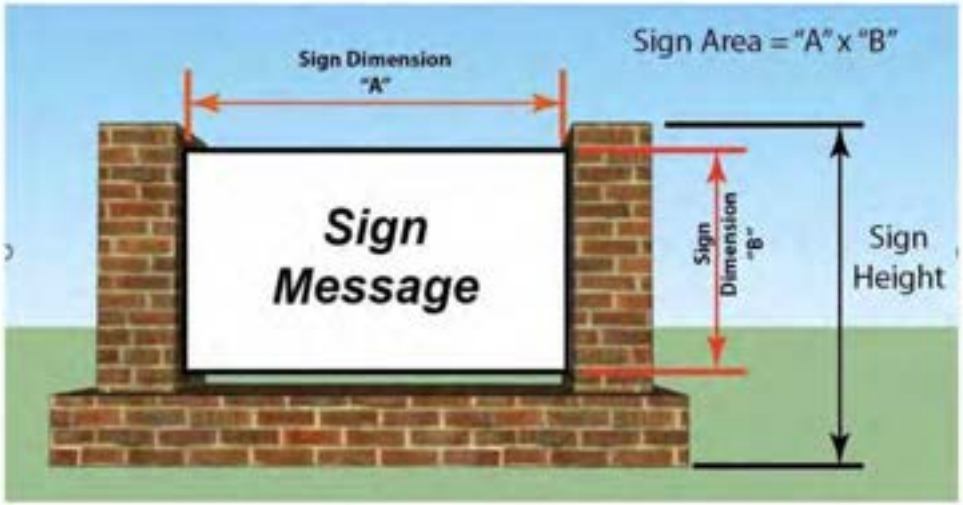
- Wall signs
- Projecting signs
- Monument signs
- Pole signs
- Window signs
- Awning signs
- Digital signs
- And so on…





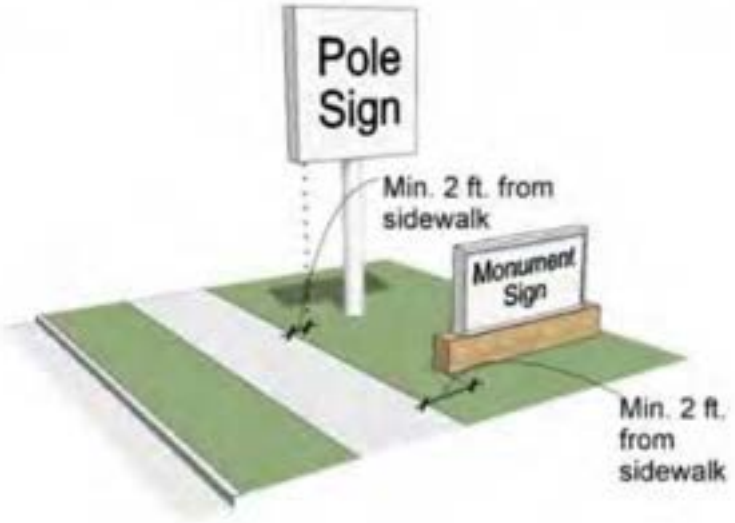
PERMANENT SIGNS

THE EASY PART



Set up the rules for height, area, location, lighting, materials, digital, etc.

- All are forms of content neutral regulations
- All are going to be based on community policy



PERMANENT SIGNS

THE EASY PART

SCOTUS gave communities the ability to make on-premise versus off-premise distinction so easy to deal with billboards.

Prior to this, many communities simply dropped the distinction. If no signs were large enough to be billboards, then billboards are essentially prohibited





PERMANENT SIGNS

THE CHALLENGE - MURALS ?

- No simple solution
- Art is a form of a message
- Some communities simply prohibit any painted wall sign, regardless of whether it would be considered art or a sign.





PERMANENT SIGNS

THE CHALLENGE - MURALS ?

Some communities take a calculated risk of making a commercial vs. noncommercial message distinction.

- Focus on the facades that can be painted
- Materials (paint or banners)
- % of coverage
- General design principles



PERMANENT SIGNS

THE CHALLENGE - MURALS ?

Some communities have a special design review.

- Sometimes by a government-based board but others by an arts group/board
  - The design criteria can be written in a content-neutral manner
  - But happens when that group doesn't like the message?



PERMANENT SIGNS

THE CHALLENGE - MURALS ?

Keep in mind…

- Art is in the eye of the beholder
- Most communities do not regulate how you paint a home
- Graffiti – Illegally placed art but not always terrible and sometimes encouraged



Noncommercial message on a residential garage door



"Graffiti" along the Donaukanal in Vienna

PERMANENT SIGNS

THE CHALLENGE - FLAGS

- Flags can be signs too…
- Many sign codes exempt US, State, and religious flags. **Don't do that!!**
- Focus on the support structure (poles/posts)
- At the most – commercial versus noncommercial distinction







TEMPORARY SIGNS

THE KIND OF EASY PART





Definitely temporary signs!

Temporary signs are a little more challenging…

- The entire structure is temporary or portable, and not intended to be a permanent installation.
- However, tough to place time limits on every temporary signs because some need longer time frames
  - Real estate signs?
  - Political/opinion signs – Free Speech is year-round!



Temporary Sign?

TEMPORARY SIGNS

THE EASY PART

You can pick and choose what TYPES of temporary sign structures to allow or prohibit!

- Yard Signs
- Banner Signs
- Feather Signs
- Air-Activated Graphics
- Balloon Signs
- Sidewalk Signs
- And so on...









TEMPORARY SIGNS

THE CHALLENGE - CONTENT

- Temporary signs are where the vast majority of content-based regulations are found.
- There is no easy solution – all approaches have pros and cons
- It is a matter or risk, and to some extent, the level of things you want to deal with in your job.









CITY000249

TEMPORARY SIGNS

THE CHALLENGE - CONTENT ?



Door #1 – 100% Content-Neutral

- Safest bet from a legal standpoint
- Most communities establish the maximum number, size, and aggregate area of temporary signage allowed, as well as set the types
- Have to allow a reasonable amount of signage to accommodate all temporary sign and speech needs – There is no magic number.
- No matter how much signage you allow, it is very likely it will be an enforcement nightmare at elections.

TABLE <> TEMPORARY SIGN ALLOWANCES			
Zoning Districts	**Residential**	**Nonresidential**	
Time Limit	Unrestricted	Unrestricted	30 Days per Quarter [1]
Maximum Number or Area per Lot	40 Square Feet	40 Square Feet	20% of Permanent Building Signage Allowed or 36 Square Feet, whichever is Less
Maximum Sign Area per Sign	6 Square Feet	16 Square Feet	
Maximum Height	4 Feet	6 Feet	6 Feet
Permitted Sign Types	Window or Yard	Banner, Sidewalk, or Yard	Banner, Feather, or Yard
Zoning Permit Required	No	No	No
[1] A quarter shall be defined as evenly timed quarter of the calendar year (January to March, April to June, July to September, and October to December).			

TEMPORARY SIGNS

THE CHALLENGE - CONTENT



Door #2 – Commercial versus Noncommercial Distinction

- Slight legal risk because it is unclear if communities can make the distinction
- Cannot be more restrictive on the noncommercial message signs
- Cannot go beyond commercial versus noncommercial distinction
- Makes administration and enforcement easier, especially around elections

Table 1163.13-1: Temporary Sign Allowances

Message	Non-Commercial Message	Commercial Message			
Zoning	All Districts	Residential Districts[1]	Nonresidential Districts	Nonresidential Districts	Nonresidential Districts (New Use)[2]
Time Limit	Unrestricted	Unrestricted	Unrestricted	30 days, twice per year	60 days
Maximum Number or Area per Lot	Unlimited	2 signs	12 sq. ft. per each 100 lineal feet of frontage	64 sq. ft.	Equal to number of existing permanent signs
Maximum Area per Sign	32 sq. ft.	8 sq. ft.	12 sq. ft.	64 sq. ft.	Equal to area of permanent sign to be covered
Maximum Height	4 ft.	4 ft.	6 ft.	6 ft.	Equal to height of existing sign to be covered
Permitted Types	Yard, Window	Yard, Window	Yard, Banner	Yard, Banner, Vehicle[3]	Banner
Permit Required	No	No	No	Yes	Yes

Note 1: Any conditionally permitted use located in a residential zoning district shall be permitted the same amount of temporary signs with a commercial message as allowed in nonresidential zoning districts.

Note 2: Regulations applicable to the establishment of a new use within an existing building where there is existing permanent sign to be covered by a temporary sign.

Note 3: Notwithstanding the provisions of *Section 1163.06.Q*, temporary signs may be permitted on vehicles (not trailers) that are operable, display current plates and registration and are parked in paved parking areas in a manner not obstructing traffic circulation.

TEMPORARY SIGNS

THE CHALLENGES

- **Obscenity**
  - Don't do it. You can try the "neighborly" way and ask for items to be removed but avoid governmental enforcement
- **Holiday celebrations**
  - Some communities maintain an exemption but that could still be considered content-based exemptions.
  - Other communities just avoid having regulations related to them.







TEMPORARY SIGNS

THE CHALLENGES

- **Human signs and vehicle signs**
  - A lot of communities just avoid regulations and hope for the best.
  - Some focus on location.
  - The toughest part is when is it intended to be a sign?







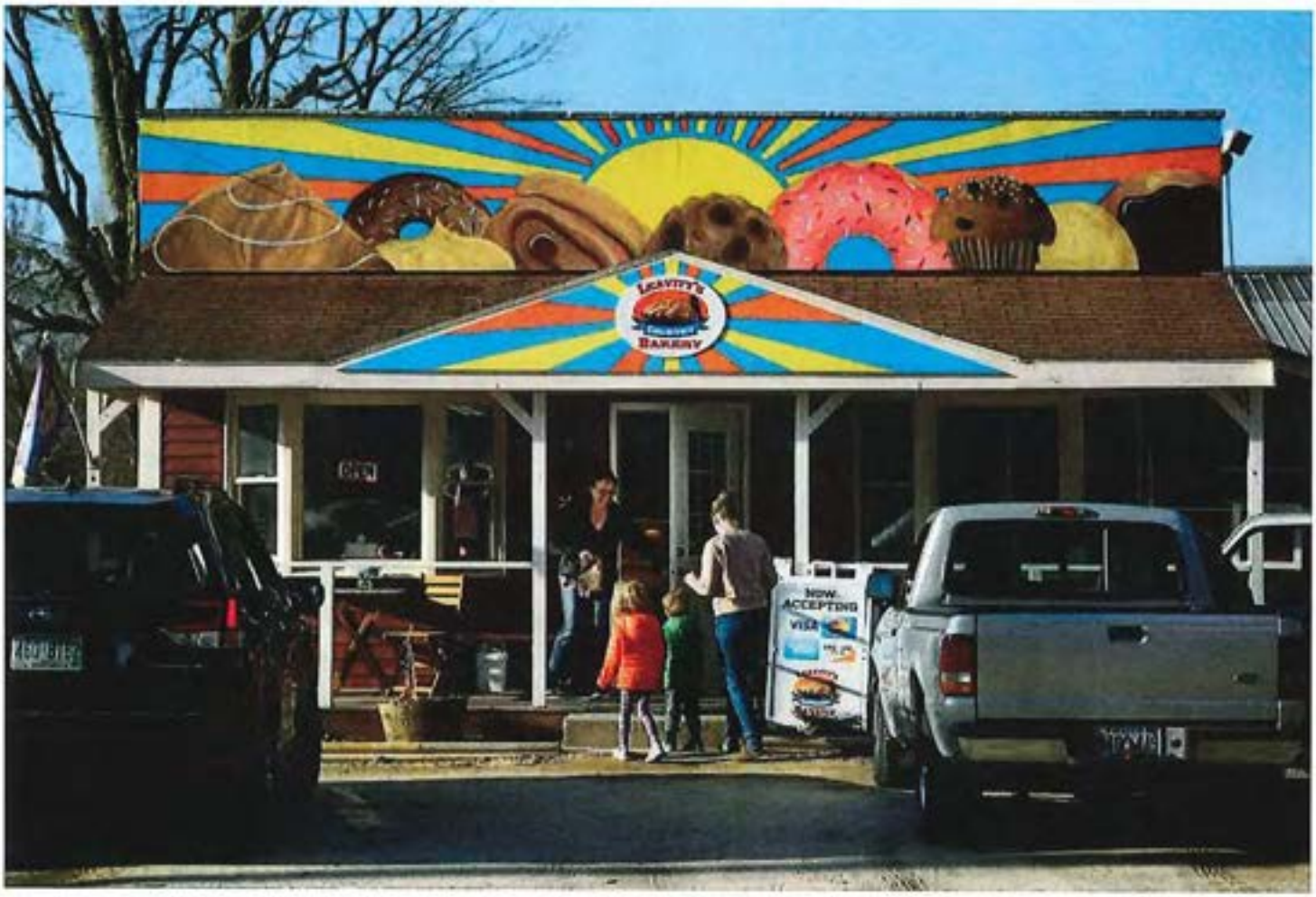




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LEAVITT'S
BAKERY
NOW
ACCEPTING
VISA

ART

Pastry Mural Pits Bakery Against NH Town in Free Speech Suit

Where is the line between art, and advertising? The unresolved question is testing the direct democracy of a small New England town, where a painting of pastries has led to zoning dispute, a First Amendment lawsuit and a local vote

By **Kathy McCormack** and Robert F. Bukaty • **Published April 18, 2023 • Updated on April 18, 2023 at 11:42 am**

Bakery owner Sean Young was thrilled when high school art students covered the big blank wall over his doorway last spring with a painting of the sun shining over a mountain range made of sprinkle-covered chocolate and strawberry donuts, a blueberry muffin, a cinnamon roll and other pastries.

The display got rave reviews, and Young looked forward to collaborating with the school on more mural projects at his roadside bakery in Conway, New Hampshire.

Then the town zoning board got involved, deciding that the pastry painting was not so much art as advertising, and so could not remain as is because of its size. Faced with modifying or removing the mural, or possibly dealing with fines and criminal charges, Young sued, saying the town is violating his freedom of speech rights.

The painting could stay right where it is if it showed actual mountains, instead of pastries suggesting mountains, or if the building wasn't a bakery.

Get Boston local news, weather forecasts, lifestyle and entertainment stories to your inbox. Sign up for NBC Boston's newsletters.

"They said it would be art elsewhere," Young told The Associated Press in an interview. "It's just not art here."

"The town should not have the right to police art," he said.

The controversy has residents of this town of 10,000 grappling with big questions about creativity and liberty as it tries to preserve its rural character. Like other White Mountain communities that draw skiers, nature lovers and shoppers, Conway is under development pressure, making the sign dispute fraught with worries that any concession to commerce could change what they hold dear.

Many — including the zoning board members — applauded the students' colorful work, but said rules must be followed, even if they're old and outdated. At about 90 square feet (8.6 square meters), the mural is four times bigger than the sign code allows.

5:53
Here's a Sneak Peak of 'Life, Liberty and the Pursuit of New Hampshire' — Streaming Now on NBC10 Boston

Life, Liberty, and the Pursuit of New Hampshire follows a libertarian political migration known as the Free State Project. Twenty years ago, one man penned a manifesto encouraging 20,000 libertarians to sign a pledge and move to the Granite State for more freedom. Now "The Free State Project" is shaking up politics and communities in New Hampshire and growing in strength and numbers.

Following a longstanding democratic tradition of New England town meetings, residents deliberated how to define a sign before ultimately voting down changes last week. The local newspaper said the proposed wording wasn't clear. Ultimately, a judge may have to resolve what remains an open debate in town.

"Those kids put their heart in it," retiree Steve Downing said. He thinks the painting should stay.

"Everyone has to comply with the ordinance," said Charlie Birch, a former U.S. Forest Service worker. "And even though it was done by the students, which was well done, and I give them a lot of credit for it ... if you have the ordinance, 'One for all,' that's where we are. You can't really make any exceptions, otherwise everybody else will want the exception."

Art teacher Olivia Benish, who worked with three students on the project, apologized to the board in September for not doing "due diligence" to make sure the mural would comply. She didn't respond to requests for an interview. But she told the board members that there has to be a way to give students the opportunity to create positive public works of art "without upsetting the law and the powers that be," according to the town minutes.

The lawsuit Young filed in January argues that the town is unconstitutionally discriminating against him. He asked a judge to prevent the town from enforcing its sign code.

And now other businesses have been drawn into the controversy.

More New Hampshire news



APR 17

Trump Holding April Campaign Event in Manchester, NH



APR 17

Mass. Woman Arrested After Leading Police on Chase Through Several NH Towns



APR 12

Catalytic Converter Theft Ring That Sawed Thru Mass., NH Is Busted, Feds Say

Long before the pastry painting was installed, the town had allowed other murals at a local shopping center, but in December the town found that three of those artworks are, indeed, signs that violate size limits. They go before the zoning board on Wednesday.

Young, who is being represented by the Virginia-based Institute for Justice, asked for $1 in damages. Meanwhile, he's selling T-shirts as a high school art department fundraiser, saying "This is Art" with the artwork on the front, and "This is a Sign" of a roadside "Leavitt's Country Bakery" sign on the back.

"As Conway officials have confirmed, the town does not consider a painting to be a "sign" if it does not convey what town officials perceive to be a commercial message," the lawsuit says. "But the town's perception is that any mural depicting anything related to a business is a 'sign.' This is governmental discrimination based on the content of the speech" and the speaker's identity, it said.

The lawsuit says the town's sign definition is "incredibly broad," with no mention of murals in the code: A sign in Conway is "any device, fixture, placard, structure or attachment thereto that uses color, form, graphic, illumination, symbol, or writing to advertise, announce the purpose of, or identify the purpose of any person or entity, or to communicate information of any kind to the public, whether commercial or noncommercial."

Get updates on what's happening in Massachusetts to your inbox. Sign up for our News Headlines newsletter.

Board member Luigi Bartolomeo said he thinks the pastry painting is art, not advertising. He read the definition out loud at the board's meeting in August, and said he agrees with a local attorney who called it "unconstitutionally vague."

"I think it's a very badly written piece of code here," said Bartolomeo, who recently retired. But Board Chairperson John Colbath said the board has to work with the ordinance, which was approved by voters, and that there is a process to change that.

"If they had done a seasonal mural on the wall — covered bridges and sunflowers and what have you — and it did not represent what your business is in, then it would be more likely to be a well-respected piece of art and not construed as a sign," Colbath said at the August meeting.

He said to Young, "I understand the art thing — and you look and you see a mountain — but the general public sees donuts on the front of the bakery."

"I think most of the people said it's art," Young responded.

In its denial of Young's appeals, the board concluded that the bakery won't be negatively affected without the display.

"This supposed distinction between murals and signs shouldn't matter," attorney Betsy Sanz of the Institute said in a news release. "After all, nothing in the First Amendment distinguishes between art and commercial signs — or commercial speech of any kind."

The town and Young agreed in February to pause court proceedings — and any potential fines or charges — pending a vote on a revised definition that would allow the painting to stay. But it failed in last week's elections, with 805 to 750 voting against it, according to the town clerk's office. The judge now wants to hear from both sides by May 10.

"We're ready to keep going," Young said.

Town Manager John Eastman declined an interview, referring questions to town lawyer Jason Dennis, who said he would soon meet with town officials to discuss next steps.

The Conway Daily Sun offered its analysis in an editorial last week: "Voters smartly concluded that the proposed new definition of signs would only further complicate enforcement. That said, it is not a stretch to conjecture that most voters are fine with the murals at Leavitt's Country Bakery and Settlers Green. We suggest the town figure out a way to back off enforcement until a clearer definition can be written, one that accommodates 'art.'"

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This article tagged under:

Exhibit J
Benson Deposition

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

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COZY INN, INCORPORATED, d/b/a
THE COZY INN; STEPHEN HOWARD
Plaintiffs,

.

vs. Civil Action No. 6:24-cv-01027-TC-ADM

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CITY OF SALINA, KANSAS,
Defendant.

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DEPOSITION OF
COLIN BENSON,

taken on behalf of the Defendant, pursuant to Notice to Take Deposition, beginning at 9:26 a.m. on the 10th day of October, 2024, at Clark, Mize & Linville, 129 S. 8th Street, in the City of Salina, County of Saline, and State of Kansas, before Sandra S. Biggs, Kansas CCR No. 0716.

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Q. -- and we're good. I don't expect you to have, you know, absolute perfect memory of everything that was said. But okay. So that's helpful. So you added the burger. Do you know if -- I mean kind of thinking back on this looking at these photos that you initially sent Steve, can you recall if Steve was the one who told you he wanted the burger --

A. No.

Q. -- and the lettering?

A. No. This -- the burger invasion is all me. I created the whole burger invasion. He told me his story of the burgers coming from Saline, you know, and everything. After that, I took it on my note to do the whole wall.

Q. Okay.

A. This was not his -- he was not wanting to do anything like that at first.

Q. Okay. And what I'm talking about now, though, are these initial photos. So I don't think, and I'm looking at this, it doesn't appear to me that this was referred to, these initial, and I'm looking at like page 1 and 2, the photo renderings that were sent there that were initially referred to as the burger invasion. Is

A. Yes.

Q. Okay. And he said he should unload his gun and back off. Do you see that?

A. Yes.

Q. What did he mean by that?

MR. SHAW: Objection to form.

A. Honestly, I don't know what he was -- what he was saying or thinking on that.

BY MS. JOKERST:

Q. Okay. But you responded. You said LOL, right. Do you see that?

A. Yes.

Q. Okay. That means laugh out loud?

A. Yes.

Q. Okay. So why did you respond LOL if you didn't know what he meant?

A. The whole -- the whole meeting we had was about a sign, and, therefore, there was no mural spoken of any of this with the city. And to me, it's funny because it is artwork. I don't work for a sign place. And all of the negativity maybe would have been the guns, what he was referring to. But, again, I have no clue what he was thinking. But I think of my murals as artwork, not signage, even how it is.

Q. Okay. Was there -- is there a business inside the building that you painted on?

A. Oh, yes.

Q. Okay. Do you know what that business was?

A. No.

Q. Okay. Did the sign that -- or, I'm sorry, the project that you painted at the alleyway in Junction City, did it contain any lettering?

A. No.

Q. Did it contain any identification of the name of a business or product?

A. No.

Q. Okay. Did -- was that a part of like an art fair or something that was sponsored by the city --

A. No.

Q. -- of Junction City?

A. No.

Q. Okay.

A. Just a -- maybe a cleanup of the city, add some color to, you know, the alleyways.

Q. Okay. And in Salina, what kind of projects have you done other than The Cozy?

A. The Riverfest -- the Smoky Hill Riverfestival.

Q. Okay.

A. I've done the mural there 20 years.

Q. Okay. Every year for 20 years?

A. Every year.

Q. Okay. The Riverfest, is that something that's done by the City of Salina?

A. Yes. It's held by the city.

Q. Okay. Are you paid for that work?

A. Yes.

Q. Okay. And so does the City of Salina like contract you to do work for that festival?

A. Yes.

Q. Okay. And they've done that for 20 years?

A. Yes.

Q. Okay. Who do you work with on that project?

A. The new director. I'm trying to remember her name. Leslie Bishop is the main director of the Arts Center. Then it was Crystal. I don't remember her last name that goes through the Riverfestival part.

Q. Okay. And Crystal works for the city?

A. Yeah.

Q. They reached out to you. And did you fly back from -- or travel back from Denver to Salina to do that?

A. Yes.

Q. Okay. All right. So we've got Sharp Performance, Cozy, Riverfest. Anything else in Salina?

A. Bike Tek.

Q. What's that?

A. Bike. Yeah, Bike Tek.

Q. Bike Tek?

A. Um-hum.

Q. Okay. What did you do there?

A. Pedals on one side and cranks on the other.

Q. Okay. And was that on the outside of the building?

A. Absolutely.

Q. Okay. All right. For Bike Tek, did they -- did they also just reach out to you by word of mouth or how did they get in touch with you?

A. I've known the owner since a kid -- since I was a kid.

Q. Okay. So they already knew that you

A. Yes.
Q. Okay. Where was that meeting held?
A. The Salina Arts Center, I believe, is what it's called. Salina Arts Center Museum.
Q. Was it the Smoky Hill Museum?
A. Smoky Hill Museum. There you go.
Q. Okay. And who was at that meeting?
A. Leslie Bishop, Brad Anderson, two city workers or city people that I do not remember, Michael -- Michael somebody with the -- he was the head of the permit. Mike, Michael something. And maybe one or two other people that I don't remember their names.
Q. Was there someone from the city named Dustin Herrs there?
A. What did you say?
Q. Was there someone from the city named Dustin Herrs there?
A. Dustin. Maybe.
Q. Okay. Other than people from the city, who was in attendance at that meeting?
A. Steve, myself and two other -- two other people that were sitting against the wall.
Q. Okay. Was your dad there?
A. Yeah, it was like I don't remember, but I

think he might have showed up later, because it was like a closed door open door deal. Like they said it was closed door and then they allowed people to come in, if that makes sense.

Q. Okay.

A. So, yeah. So I believe he did walk in at the end.

Q. Okay. And what was discussed at that meeting?

A. There were sign permits put in front of us before I even got into the room or put on the table, and it was about why we didn't get a sign permit is what I remember.

Q. Okay. So did the city inform you at that meeting that they considered the display a sign?

A. Correct.

Q. Did the city inform you at the meeting that the display was too large to qualify for a sign permit?

A. Correct.

Q. Okay. Did the city give you a handout that had like an analysis about the sign and the size?

A. Yes, I believe so.

Q. Okay.

were at that meeting?

A. Yes.

Q. Okay. What did you say?

A. I don't believe it was a signage being put up. I believe it's a mural. It had nothing to do with what we were there for. And I was shut down pretty quick. So that was about all I had to say.

Q. Okay. Did they explain to you at the Smoky Hill Museum, and by they I'm talking about representatives of the city, why they considered it a sign?

A. Yes.

Q. Okay. What did they tell you?

A. The hamburgers are basically the same thing he sells and, therefore, it would be signage.

Q. Okay. Prior to this meeting at Smoky Hill Museum, had you already heard that the city considered that display a sign?

A. No.

Q. Okay. So Steve didn't tell you the conversations -- did Steve talk to you about the conversations he'd had with the city prior to that meeting?

formally admit Exhibit B into the deposition record.

BY MS. JOKERST:

Q. Let's have you look at Exhibit C. There's two pages there. I'll just have you flip through them. Okay. Are these -- what's in this document? Are these your Facebook posts?

A. Yes. Those are Facebook posts that I put out there about the mural.

Q. Okay. And are these true and accurate depictions of the post that you placed on Facebook?

A. Absolute -- yes.

MS. JOKERST: Okay. I'll move to formally admit Exhibit C into the record, the deposition record.

BY MS. JOKERST:

Q. Okay. So let's look at page 2. And we've talked about there before on the other exhibit. This one's a little more clearer, so we'll look at this one. This is your post from November 5th, 2023 and you said, oh, you can smell the love I'm throwing down on the Cozy?

THE REPORTER: She's on C.

A. Oh, C. My bad.

Q. Okay. So why did you send this rendering to Mr. Howard?

A. This is -- this is the ending of all of it. The mothership is the big burger, and basically the lights weren't done on that. But this is the end rendering of all the spaceship burgers on the whole building.

Q. Okay. But this is different than the rendering that you started painting on the building, right?

A. No.

Q. Well, you told me that you had outlined everything by the 5th, right?

A. On that section. I wasn't able to do the whole building.

Q. Okay. On that section --

A. Yeah, I started doing the section.

Q. Okay. But you're talking about the section on the left, right?

A. Yeah, the big burger, yes.

Q. Yeah. Okay. So let's take a look at Exhibit F. Okay. Go ahead and take -- there's four photos there. Do you recognize these photos?

A. Absolutely.

Q. Okay. What are they?

Q. Okay. That's painted in, right?

A. Partial.

Q. Okay. Well what -- what's not painted in there?

A. The meat, the pickles, pretty much none of the top because that -- the cockpits are all see through, so I have to paint everything before I can do a see through cockpit on top of it because it's transparent. Therefore, if I would paint through transparency, it wouldn't be transparent. So I would paint the burger first. Then I add the cool details and stuff afterwards as kind of the rendering of the very last Exhibit N.

Q. Okay. Well, aren't the cockpits at Jenni's Liquor, those are transparent, right?

A. Yeah.

Q. Okay. So then why were those outlined in the painting at Jenni's Liquor? So let's take a look at that. I want you to take a look at Exhibit I.

A. I used the background color as they're see through.

Q. Okay. But I want you to look at Exhibit I. That stencil is complete, right?

A. Yes.

Q. And there's no outline there of any depiction that could be considered a UFO driver of, is there?

A. No.

Q. Okay. One second. And on the big burger in the middle, there's no outline of a depiction of what could be a UFO driver there, right?

A. No, there is not.

Q. So I want to go back to. Actually --

MS. JOKERST: Okay. I actually don't have any further questions.

RECROSS-EXAMINATION

BY MR. SHAW:

Q. Was it your intention when this mural was finished to have cockpits and aliens on the burger UFOs?

MS. JOKERST: Object to form.

BY MR. SHAW:

Q. You may answer.

A. Every single one.

Q. Okay.

A. I stated earlier that it was the mother ship, and it was going to have lights and everything. When you do transparent stuff, you

CERTIFICATE

STATE OF KANSAS

COUNTY OF SHAWNEE

I, Sandra S. Biggs, a Certified Court Reporter, Commissioned as such by the Supreme Court of the State of Kansas, and authorized to take depositions and administer oaths within said State pursuant to K.S.A 60-228, certify that the foregoing was reported by stenographic means, which matter was held on the date, and the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of the same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and seal this 21st day of October, 2024.

SANDRA S. BIGGS STATE OF KANSAS CERTIFIED SHORTHAND REPORTER

Sandra S. Biggs

Sandra S. Biggs, C.C.R No. 0716

Exhibit K
Blase Deposition Excerpts

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

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COZY INN, INCORPORATED, d/b/a
THE COZY INN; STEPHEN HOWARD
Plaintiffs,

.

vs. Civil Action No. 6:24-cv-01027-TC-ADM

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CITY OF SALINA, KANSAS,
Defendant.

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DEPOSITION OF
JESSICA BLASE,

taken on behalf of the Defendant, pursuant to Notice to Take Deposition, beginning at 3:56 p.m. on the 10th day of October, 2024, at Clark, Mize & Linville, 129 S. 8th Street, in the City of Salina, County of Saline, and State of Kansas, before Sandra S. Biggs, Kansas CCR No. 0716.

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A. Um-hum.

Q. Okay. And what did he tell you that it was supposed to depict?

A. Spaceships that looked like hamburgers.

Q. Okay. When you talked to Colin about the painting, was there anyone else around?

A. Not that I can remember.

Q. Okay. Prior to Colin starting the painting, did he -- I understand that he came into The Cozy to talk to Steve about the display. Were you around when Colin was in The Cozy talking to Steve?

A. I was there at work, yes.

Q. Okay. Did you hear what they were talking about?

A. No. They were mainly in the back. I was busy working.

Q. Okay. Okay. And then at some point, did someone from the city call The Cozy?

A. Someone did call, yes.

Q. Okay.

A. I don't know -- I can't remember his name. I know it was a male. He called, asked if Steve was at work. I said he wasn't. He said that he needed to call him ASAP and to not paint

CERTIFICATE

STATE OF KANSAS

COUNTY OF SHAWNEE

I, Sandra S. Biggs, a Certified Court Reporter, Commissioned as such by the Supreme Court of the State of Kansas, and authorized to take depositions and administer oaths within said State pursuant to K.S.A 60-228, certify that the foregoing was reported by stenographic means, which matter was held on the date, and the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of the same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and seal this 21st day of October, 2024.

SANDRA S. BIGGS STATE OF KANSAS CERTIFIED SHORTHAND REPORTER

Sandra S. Biggs

Sandra S. Biggs, C.C.R No. 0716

Exhibit L
Schrage Deposition Excerpts

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

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COZY INN, INCORPORATED, d/b/a
THE COZY INN; STEPHEN HOWARD
Plaintiffs,

.

vs. Civil Action No. 6:24-cv-01027-TC-ADM

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CITY OF SALINA, KANSAS,
Defendant.

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DEPOSITION OF
MICHAEL SCHRAGE,

taken on behalf of the Plaintiffs, pursuant to Notice to Take Deposition, beginning at 9:09 a.m. on the 11th day of September, 2024, at Clark, Mize & Linville, 129 S. 8th Street, in the City of Salina, County of Saline, and State of Kansas, before Sandra S. Biggs, Kansas CCR No. 0716.

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A. City manager.

Q. What do you do as city manager?

A. I guess you'd say the chief executive officer of the organization. I oversee all of the personnel, the various departments of the city, and then I answer to the governing body.

Q. And the governing body, do you mean the city commission?

A. Yes, mayor and city commissioners.

Q. How many departments are there?

A. 13-ish.

Q. And how many employees, roughly?

A. 450 full-time. It doesn't count classified part-time or seasonal part-time.

Q. How long have you been city manager?

A. Since middle of 2018, so going on five and a half -- five years.

Q. What did you do before becoming city manager here?

A. I was deputy city manager.

Q. At the City of Salina?

A. Yes.

Q. Excuse me. How long were you deputy city manager?

A. 13 and a half years, 2005 -- December of

Q. So turning to around November 3rd, 2023, when was the first time you were made aware of the artwork at the Cozy?

A. The reason I laugh, is I'm not good -- I'm good at generalities but not specifics. My recollection is I was sitting in my recliner one evening. I think it was Sunday night kind of piecing together some of the other conversation and was made aware that it was being painted and they'd been contacted and had the concern conveyed.

Q. Do you remember who contacted you?

A. It was either Brad Anderson or Lauren Driscoll, but I'm not sure.

Q. I think you said piecing together a conversation. What did you mean by that?

A. Just in terms of the date of it being a Sunday evening.

Q. What was your reaction?

A. I knew it was going to be a difficult, confusing, emotional conversation.

Q. Why is that?

A. I've been doing city management for 35 years. It just -- that was my instinct. And so my reaction was how do we -- how do we prepare to

have a productive conversation managing up, down and out, as I described before.

Q. Do you recall if whoever notified you whether it was Brad or Lauren, did they call you or text you or e-mail you? Do you recall?

A. I guess I don't. I thought it was a text, but in reviewing my texts in response to this previously, I didn't find it. So maybe it was a phone call.

Q. Is that typical for a staff member to call you on a Sunday night?

A. It's not uncommon. Not typical, but between texts, e-mails, phone calls, yeah, multiple times a week.

Q. Why -- or was this a little bit out of the ordinary that somebody would reach out to you on a Sunday evening about --

A. Yeah. I mean it -- yes.

Q. Is it because of the nature of the Cozy Inn?

A. Combination of that, and I think by the time they contacted me, they had a sense that it had kind of taken on a public level of conversation that was going to get ahead of myself, city commission, others and they wanted me

to know that.

Q. What does that mean, get ahead of you?

A. Social media conversation. Generally, I want to be aware as much as I can be, and then I want to make the city commission aware rather than hear about it secondhand and be caught off guard.

Q. When either Brad or Lauren contacted you Sunday night, did they tell you that a determination had been made about whether it was a sign or not?

A. No. I mean I think the -- what they conveyed to me was the concern that it was and that there was going to need to be a conversation with the owner.

Q. The owner being?

A. Steve Howard.

Q. Got it. So had you seen the display by Sunday evening?

A. No.

Q. When was the first time you saw the display?

A. Driving into work about 6:30 Monday morning, I think.

Q. All right. And do you drive past the Cozy every day?

Q. What else?

A. I think that was it.

Q. A printout of the codes and how they're interpreted. Is that what you said?

A. For the purpose of having a conversation with Steve and his artist about how -- what the applicable code was relative to what he had started.

Q. Did you -- and forgive me, you think you saw Dustin Herrs give that packet?

A. Yeah, that's my recollection.

Q. Okay. So going back to Deposition Exhibit 19, I just want to make sure I understand, the determination had already been made by November 8th that the artwork was a regulated sign?

MS. JOKERST: Object to form and foundation.

A. Yeah. I would say my preliminary opinion based on what I saw was that it met the definition of a wall sign.

BY MR. MACROBERTS:

Q. On the next sentence, what did you mean when you said while it aesthetically might look similar to murals in the downtown elsewhere, it

contains a commercial message promoting a business and its product which makes it a wall sign subject to the applicable zoning codes which includes size limitations among other things?

MS. JOKERST: Object to form.

A. So I was trying to boil down the applicable portion of the sign code definition and how it is that the Cozy sign met the definition of a sign by our code and then became subject to the applicable size limits.

BY MR. MACROBERTS:

Q. And what part of the code were you trying to boil down?

MS. JOKERST: Object to form.

A. All the content of the definition of a sign or at least parse out what was applicable in this case.

BY MR. MACROBERTS:

Q. And what was your understanding of what was applicable on November 8th?

A. Advertising --

MS. JOKERST: Object to form.

A. Advertising among -- I don't have the definition committed to memory but directing attention to and advertising.

Q. Would you please say that again?

A. I believe the commercial signs, advertising signs, are a subset of the signs that we regulate.

Q. If you look a little bit down below, underneath the part that says Important Note. That's the easiest way to kinds of reference it. You wrote to the city commission that I recently spoke with Mr. Howard?

A. So apparently I did, yes.

Q. And I'm hoping maybe that jogs your memory.

A. Yeah. So I have a better recollection I guess of how this timeline played out relative to becoming aware, being contacted by the media, having a conversation with Mr. Howard and then in preparation for -- well, and then him going on the radio and fielding comments about his comments on the radio and then having a conversation with him.

Q. Did you call Mr. Howard?

A. Yeah, I probably did.

Q. Do you recall why you did?

A. Really just trying to calm things down a bit, have the conversation be at our level rather than have it be a social media fire storm possibly

uninformed, trying to have some collaborative dialogue and have cooler heads prevail.

Q. I think you mentioned a couple of times either today or through e-mails that you thought this was an emotional conversation?

A. Um-hum. For him. For Steve it was.

Q. Is that a yes?

A. Yes.

Q. Steve in your estimation was upset he couldn't finish his display?

A. He -- I don't know what upset him, but he was moved to tears.

Q. On the phone or in person?

A. In person and at the city commission meeting.

Q. Was he actually crying or just he had tears in his eyes?

MS. JOKERST: Object to form.

BY MR. MACROBERTS:

Q. I'm just trying to figure out what you meant, moved to tears.

A. Yeah. My recollection of him leaving the city commission meeting was that he was crying. The meeting we had at Arts & Humanities may have been tears in his eyes, but he was emotional.

Q. Do you recall giving a media interview to KSN?

A. Yes.

Q. Have you reviewed -- did you see the version that was aired?

MS. JOKERST: Object to form and foundation.

A. At the time.

BY MR. MACROBERTS:

Q. If you would, please, turn to Deposition Exhibit 92.

A. Okay.

Q. I can't tell from my electronic version whether this is 304 or 305. But there's a quote that's attributed to you?

A. Okay. There's one at the bottom -- starts at the bottom of 304 and rolls over to 305.

Q. I'll read to you the quote. It includes a message that pertains to the good or services for sale and that makes it a sign and makes it subject to the sign code said Mike Schrage, Salina City Manager. Do you see where --

A. Yes.

Q. -- that is?

A. Yeah.

Q. You said that to the reporter?
A. Yeah, I believe so.
Q. There's no reason to think you didn't say that, right?
A. Right.
Q. Okay. If you could please turn to Deposition Exhibit 39.
A. Okay.
Q. What is -- and you might laugh at this question. What is a City Manager Update?
MS. JOKERST: Object to form.
A. It's a document that I draft most weeks. I haven't been doing nearly as well lately. But just trying to summarize various things that come up to keep the city commission informed.
BY MR. MACROBERTS:
Q. Is it typically a weekly summary?
A. That's the goal. Yeah, that's the goal.
Q. Did you author -- I know I'm already laughing at this question, but did you author the City Manager Update that's at Deposition Exhibit 39?
A. Fair question. If I could get somebody else to, I would but, yes, I did.
Q. Including the e-mail?

A. Okay.

Q. I'm just trying to get a timeline of things. On page 3, you told the city commission that, quote, we met with Mr. Howard and his artist this morning. Were you in that meeting?

MS. JOKERST: Object to form.

A. Yes. That was the meeting at Arts & Humanities, I believe. The look on your face makes me wonder, but I believe.

BY MR. MACROBERTS:

Q. I'll represent to you that the city commission meeting that we're talking about is -- and you can go to Deposition Exhibit 2, page 1 held on November 13th.

A. Yeah. My recollection, I'd have to piece it back together, I guess, is when I first became aware, there already was social media, community conversation going on. Brad Anderson had already offered to convene a meeting, and we met at Arts & Humanities that Monday morning.

Q. So that Sunday that you talked about that you first heard about it was November 5th, right?

A. Off the top of my head, I don't know. Without some other documents, I don't know for sure.

Q. Did you meet with Steve the day of the city commission meeting on November 13th?

MS. JOKERST: Object to form.

A. Yes. On line 24, I said we met with Mr. Howard and his artist this morning, so I presume that November 13th was the date, and I met with him the morning of November 13th.

BY MR. MACROBERTS:

Q. Part of why I'm asking this question, sometimes people say we and they're speaking about other people?

A. Sure.

Q. So --

A. No. This reference is intended to include me.

Q. On page 4, lines 13 through 15, you were telling the city commission you wanted to clarify a couple of things. And you told the city commission that, quote, the issue is not about the art. What did you mean by that?

A. I was --

MS. JOKERST: Object to form.

A. I was trying to proactively respond to the accusations that were flying about the community that we had vetoed this particular

Q. Based upon your understanding of the code, the display or the art does factor into whether it's deemed a sign?

MS. JOKERST: Object to form and foundation.

A. No.

BY MR. MACROBERTS:

Q. Why is that?

A. It's not about the art. It's about the definition of a sign.

Q. And when you're talking about the definition of a sign, you need to look at the display to figure that out. Is that right?

MS. JOKERST: Object to form.

A. Yes.

BY MR. MACROBERTS:

Q. What are the -- so we're going to stick with page 4 for a little bit here. What are the examples of very similar issues as it relates to what constitutes art, what constitutes a sign, how does free speech get involved, how can signs and art be regulated. What are those examples?

A. Well, the one --

MS. JOKERST: Form and foundation. I've got to get my objection in.

station was conflating a lot of broad topics not applying our code.

BY MR. MACROBERTS:

Q. So as you understand the city code, that display is a regulated sign?

MS. JOKERST: Object to form.

A. Yes.

BY MR. MACROBERTS:

Q. What did you mean when you said we do not regulate based on aesthetics?

MS. JOKERST: Object to form.

A. Again, I was trying to confirm that we -- this was not an opinion of whether we like the aesthetic aspects of the sign. It was purely a question of is it a sign and does it meet our codes.

BY MR. MACROBERTS:

Q. And I think later on you commented that the mural popped?

MS. JOKERST: Object to form.

A. I did or a commissioner did. I've got to confirm that a commissioner did.

BY MR. MACROBERTS:

Q. Later on you told the city commission, quote, and I would reiterate it's all on the basis

of a commercial message. Do you remember saying that?

MS. JOKERST: Object to form.

A. Yes.

BY MR. MACROBERTS:

Q. And that was truthful and accurate?

MS. JOKERST: Object to form and foundation.

A. As it applied to my understanding of the Cozy sign, yes.

BY MR. MACROBERTS:

Q. At some point, Ms. Driscoll, which you just referenced, talked about the coffee shop hypothetical. Do you remember that hypothetical?

A. Yes.

Q. Do you agree with that hypothetical as it relates to the Salina city code?

MS. JOKERST: Object to form and foundation.

A. That's consistent with my understanding of the case in question, and I think it is illustrative of how we have an example that would -- we would have to parse our code to make a determination as she described.

BY MR. MACROBERTS:

Q. So do you agree with the hypothetical as it relates to the city code?

MS. JOKERST: Object to form and foundation.

A. My recollection is that a coffee cup on the side of a coffee shop would be deemed to be -- meet our sign code definition and, yeah, I would agree with that.

BY MR. MACROBERTS:

Q. You -- do you recall continuing Ms. Driscoll's hypothetical about the coffee shop later on with the city commission?

MS. JOKERST: Object to form.

BY MR. MACROBERTS:

Q. I'll show you the page. I'm just wondering if you recall it?

A. Vaguely.

Q. And I believe it's page 26. So it's your -- so lines probably 16 through 22, but certainly 17 through 22. Just using that coffee shop hypothetical, it's your understanding of the Salina city code, again, that if a coffee shop paints a coffee cup on the side of its wall, that's considered a sign?

MS. JOKERST: Object to form and

foundation.

A. Among others, but yeah.

BY MR. MACROBERTS:

Q. Is it popular?

A. It's not unpopular. It's not widely popular but, yeah, it's appreciated by most.

Q. As I understand it, it does generate enthusiasm and energy?

A. Yeah. It generates conversation and tourism. It's not without its detractors.

MR. MACROBERTS: All right. I would like a two-minute break. We can go longer if somebody would like.

MS. JOKERST: Yeah, take five minutes. Two is a little long for me to go grab some water.

MR. MACROBERTS: Yep, sounds good.

(THEREUPON, a recess was taken.)

BY MR. MACROBERTS:

Q. If you would please turn to Exhibit 93?

A. Okay.

Q. Do you recognize it?

A. Yes.

Q. Did you author it?

A. Yeah.

Q. Is Deposition Exhibit 93 the same as the electronic version?

A. I believe so, yes.

Q. And no reason to think it's not?

A. No.

Q. Do you know why you authored this e-mail?

MS. JOKERST: Object to form.

A. I wasn't sure whether he was even aware of the conversation and that Boom! Salina might get caught up in the conversation. I was just trying to make him aware of what had taken place and where things stood.

BY MR. MACROBERTS:

Q. Did you write this e-mail on your own initiative?

A. Yes.

Q. When you say he, who do you mean?

A. I'm sorry. Do I say it in the e-mail or I just said it verbally?

Q. As I heard your answer, you were saying he and I'm assuming --

A. Oh, Travis Young, the recipient of the e-mail.

Q. Why are you telling Travis what your intended response is?

MS. JOKERST: Object to form.

A. He, as I mentioned earlier, is the organizer of Boom! Salina and they had been kind caught up -- that project had been caught up in the conversation. It's just good form to try to keep people informed.

BY MR. MACROBERTS:

Q. You tell Travis that your intended response is to stress that we have been very mindful of the Reed v. Gilbert case as well as applicable case law regarding what constitutes commercial speech. What applicable case law constitutes commercial speech were you referencing?

A. Those --

MS. JOKERST: Object to form.

A. Those examples that I shared earlier, general understanding of the various litigation that had gone on previously.

BY MR. MACROBERTS:

Q. If you would, please turn to Deposition Exhibit 52. Do you know who authored Deposition Exhibit 52?

A. Based on the letterhead, it appears that Dustin Michelson as well as the signature block.

A. Yes.
Q. What is it?
A. It's the batting -- or the -- I don't even know how to describe it but kind of an indoor athletic area for The Yard.
Q. The Yard, are you familiar with The Yard?
A. Yes.
Q. What do they do on the inside of The Yard?
A. Baseball, softball instruction.
Q. If you look to the right where it says Salina, do you see the Royals crown vision --
MS. JOKERST: Object to form and foundation.
BY MR. MACROBERTS:
Q. -- board?
A. Yes.
Q. Is that what you understand that to be, the Royals crown vision board?
A. I don't know if they have avoided trademark infringement enough, but it generally represents it, yes.
Q. You've been to Royals games, right?
A. Yeah.
Q. Okay. As you are looking at the right

side, based upon your understanding of the city code, is that a sign?

MS. JOKERST: Object to form and foundation.

A. No.

BY MR. MACROBERTS:

Q. Why not?

A. Interior -- inside versus outside orientation.

Q. And help me understand why that matters under your understanding of the city code?

MS. JOKERST: Object to form.

A. It's one of the provisions of our definition of a sign.

BY MR. MACROBERTS:

Q. Is it your understanding that anything that is inside is unregulated?

MS. JOKERST: Object to form and foundation.

A. No.

BY MR. MACROBERTS:

Q. What is your understanding?

A. If there's an outward orientation, if it's on the inside of a plate glass window, it's applied at the staff level, but it's not -- there

Q. Based upon your understanding of the city code, is the display at Deposition Exhibit 73, and we'll just talk about page 80 because it's a little bit easier, does that constitute a sign?

MS. JOKERST: Object to form and foundation.

A. No.

BY MR. MACROBERTS:

Q. Why not?

MS. JOKERST: Object to form and foundation.

A. It doesn't meet any of the definitional elements of a sign by our code.

BY MR. MACROBERTS:

Q. Does it bring people to Salina?

MS. JOKERST: Object to form and foundation.

A. I believe so.

BY MR. MACROBERTS:

Q. It's my -- correct me if I'm wrong, but it's my understanding that the inside of the grain elevator is defunct, right? There's nothing going on on the inside?

A. Yeah, that's my understanding as well, yeah.

Q. If a playground, an indoor playground was built inside of that grain silo today, based upon your understanding of the city code, would that be a sign?

MS. JOKERST: Object to form and foundation.

A. I would seek legal counsel to answer that question.

BY MR. MACROBERTS:

Q. Because you could not determine it on your own?

MS. JOKERST: Object to form and foundation.

A. Correct.

BY MR. MACROBERTS:

Q. If you would please turn to Deposition Exhibit 71. Do you recognize it?

A. Hang on.

Q. Sorry.

A. Yes.

Q. What is it?

A. It is a graphical image on Fire Station No. 2.

Q. Do you know if that's a painting or photographs or what is the display made of, if you

know?

MS. JOKERST: Object to form.

A. It's a metal core board. I don't know what they call it exactly, but it's like a structural metal panel with this etched on it in some way.

BY MR. MACROBERTS:

Q. Based upon your understanding of the city code, is that -- are the displays considered signs?

MS. JOKERST: Object to form and foundation.

A. They could be, yes.

BY MR. MACROBERTS:

Q. What about that makes it a sign or could be -- could make it a sign?

MS. JOKERST: Object to form and foundation.

A. It -- I'm trying to think of the definition, but it's calling attention to the fire station. It may not be the exact wording in the definition but...

BY MR. MACROBERTS:

Q. Do you know whether a permit or Certificate of Compatibility was applied for for

guess that's the extent of it.

BY MR. MACROBERTS:

Q. Do you know what goes on the inside of the building where that display is painted?

A. It's a Land Title company.

Q. Do you know who owns the Land Title company?

A. Mike Hoppock.

Q. At the time this was repainted, was Mr. Hoppock a city commissioner?

A. Yes.

Q. Did Mr. Hoppock apply for a permit?

MS. JOKERST: Object to form and foundation.

A. I believe so, yes.

BY MR. MACROBERTS:

Q. And did Mr. Hoppock go to the Design Review Board?

A. I believe so, yes.

MS. JOKERST: Sorry. I wasn't sure if your question was finished. Object to form and foundation.

BY MR. MACROBERTS:

Q. Going back to your -- or going back to Ms. Driscoll's coffee shop hypothetical and the

one that you referenced, based upon your understanding of the city code and thinking about the coffee shop hypothetical, if Mr. Howard painted an airplane on the side of his wall with no verbiage at all, was just a silver airplane, would that be considered a sign?

MS. JOKERST: Object to form and foundation.

A. No.

BY MR. MACROBERTS:

Q. Why not?

MS. JOKERST: Object to form and foundation.

A. It doesn't rise to the criteria specified in our sign code definition.

BY MR. MACROBERTS:

Q. Is that because Mr. Howard does not sell airplanes on the inside of his business?

MS. JOKERST: Object to form and foundation.

A. Not just airplanes but, yeah, no direct connection to his business and the depiction of an airplane.

BY MR. MACROBERTS:

Q. On the coffee shop hypothetical, if a

coffee shop painted a dove on the side of its wall and instead of having an olive branch had painted a coffee branch, based upon your understanding of the code, would that be considered a sign?

MS. JOKERST: Object to form and foundation.

A. I would seek legal counsel on that but, yes, I believe so.

BY MR. MACROBERTS:

Q. Are you familiar with Andy Warhol's works?

A. Marilyn Monroe and the tomato cans maybe.

Q. Yeah. On the tomato can, have you seen that one before?

A. Quite sometime ago.

Q. If Mr. Howard had painted an exact replica of Andy Warhol's Campbell's Soup can on the side of his wall, exact replica, would that be considered a sign under your understanding of the city code?

MS. JOKERST: Object to form and foundation.

A. Applying on my understanding of the definitional criteria, no, I don't believe it would be a sign.

BY MR. MACROBERTS:

Q. Why not?

MS. JOKERST: Object to form and foundation.

A. I don't know that it advertises, calls attention to, directs anything pertaining -- as you've described it, anything that he does.

BY MR. MACROBERTS:

Q. If Mr. Howard started selling Campbell's Soup inside, would that change the analysis for you?

MS. JOKERST: Object to form and foundation.

A. Yes.

BY MR. MACROBERTS:

Q. If -- and forgive me. I think there's a grocery store. Is it called DG Grocery Store in town?

A. Dollar General.

Q. Okay. Let's just use as a hypothetical a grocery store. If a grocery store paints an exact replica of Andy Warhol's Campbell's Soup can on the side of its wall, would that be considered a sign under your understanding of the code?

MS. JOKERST: Object to form and

foundation.

A. Yes.

BY MR. MACROBERTS:

Q. Why?

MS. JOKERST: Object to form and foundation.

A. Directing attention to and advertising products that they sell.

MR. MACROBERTS: I think we are close if not maybe done. If I could get maybe five minutes just to double-check that I've asked everything I wanted to.

MS. JOKERST: Yeah, that works for me because I would like a little break, too. I might have a couple of questions here, so I can organize my thoughts.

MR. MACROBERTS: Can we go off the record just for a moment.

MS. JOKERST: Yeah.

(THEREUPON, a recess was taken.)

BY MR. MACROBERTS:

Q. Was there one person who made the decision that the display at the Cozy was a sign or not?

MS. JOKERST: Object to form.

A. Not to my -- I think it was a collective staff analysis and conclusion.

BY MR. MACROBERTS:

Q. And for the collective staff analysis and conclusion, who do you mean?

A. I presume -- certainly Lauren Driscoll and Dean Andrew, and then possibly their planning staff.

Q. I'm sorry?

A. Possibly additional planning staff.

Q. Like who?

A. Dustin Herrs, I don't even know if Gage Roberts was employed at that point, but we've got a couple planners.

Q. Are you aware if there have been any traffic accidents as a result of the -- as a direct result of the display on the side of the Cozy?

MS. JOKERST: Object to form.

A. No, I'm not.

BY MR. MACROBERTS:

Q. Are you aware of any pedestrian accidents as a direct result of the display at the Cozy?

MS. JOKERST: Object to form.

A. No, I'm not.

BY MR. MACROBERTS:

Q. Is there any health hazard that you can think of as a direct result of the display at the Cozy?

MS. JOKERST: Object to form.

A. Direct result, no.

BY MR. MACROBERTS:

Q. Are you aware that property valuations have gone down as a direct result of the Cozy?

MS. JOKERST: Object to form.

A. I'm not aware either way.

BY MR. MACROBERTS:

Q. When you're out and about in the community, has the public been generally in favor of the Cozy's display?

MS. JOKERST: Object to form and foundation.

A. It's been mixed.

BY MR. MACROBERTS:

Q. Have you received any complaints about the Cozy's display?

A. Complaints -- I've received critical feedback, criticism.

Q. Formal complaints?

A. No.

CERTIFICATE

STATE OF KANSAS

COUNTY OF SHAWNEE

I, Sandra S. Biggs, a Certified Court Reporter, Commissioned as such by the Supreme Court of the State of Kansas, and authorized to take depositions and administer oaths within said State pursuant to K.S.A 60-228, certify that the foregoing was reported by stenographic means, which matter was held on the date, and the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of the same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and seal this 19th day of September, 2024.

SANDRA S. BIGGS STATE OF KANSAS CERTIFIED SHORTHAND REPORTER

Sandra S. Biggs

Sandra S. Biggs, C.C.R No. 0716

Exhibit M
Driscoll Deposition Excerpts

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

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COZY INN, INCORPORATED, d/b/a
THE COZY INN; STEPHEN HOWARD,
Plaintiffs,

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vs. Civil Action No. 6:24-cv-01027-TC-ADM

.

CITY OF SALINA, KANSAS,
Defendant.

.

.

DEPOSITION OF
LAUREN DRISCOLL,

taken on behalf of the Plaintiffs, pursuant to Notice to Take Deposition, beginning at 9:06 a.m. on the 10th day of September, 2024, at the law offices of Clark, Mize & Linville, 129 S. 8th Street, in the City of Salina, County of Saline, and State of Kansas, before Sandra S. Biggs, Kansas CCR No. 0716.

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the discovery questions?

A. I provided information as part of the documents prepared to be provided to you guys.

Q. Great. Please tell me what your current role is with the city?

A. I'm the director of Community & Development Services for the City of Salina, Kansas.

Q. And what does that department do?

A. We handle planning, both current and long range, zoning. We also handle property maintenance, code compliance, building inspections and permitting along with civil rights enforcement for the city and then the administration components that go along with that.

Q. And what is the difference between long-term and short-term planning?

A. Long range would be like comprehensive plan and visions and goals for a city that go into a plan and how those are then implemented, and current planning is like day-to-day permit processing.

Q. Is there a division above you that you report to?

A. I report to the city manager.

regulations, both what happens in the C4 and the downtown design review standards.

Q. Do you interact at all with the Design Review Board?

A. No.

Q. Does your department?

A. Yes.

Q. Who in your department would interact?

A. That would also be the Planning Division.

Q. Dean, Dustin, Dustin and Gage?

A. Correct.

Q. When somebody applies for Certificate of Compatibility, does it go to your division?

A. You mean does it go to Planning Division?

Q. Does it go to the Community Services, whatever your director of, I apologize?

A. Well, it comes into the department, so all those things are under the department. And it runs through Admin to make sure the application is complete, all the attachments are there, they've done those things, and then it goes to the Planning Division, which is Dean, Dustin, Dustin and Gage, for actual review and moving forward with the boards.

Q. And what does that mean, moving forward

Q. Would you -- do you know if Crystal was talking to Brad Anderson by any chance about this issue?

A. I --

MS. JOKERST: Object to form.

THE REPORTER: Your answer?

A. I do not know.

THE REPORTER: Thank you.

BY MR. MACROBERTS:

Q. Did you meet with Steve about this issue?

A. Yes. Not on that day.

Q. When was the first time you met with Steve about the issue?

A. It would have been the Thursday of that week. So Monday, Tuesday, Wednesday, Thursday we met with him.

Q. When you say we, who was there?

A. It was myself, Dustin Herrs, Mike Schrage, Steve Howard, the artist who had painted the wall, and then Mr. Howard had invited other people. There were -- I think there was -- they were just like concerned friends. I think there were three of them, like a husband and a wife and another person. And then Brad was there. I can't remember if Crystal was there.

A. Because we were already getting kind of a lot of political and external communication both on social media. I think the city commissioners were concerned just, you know, misunderstanding that the Cozy is -- it's the Cozy. It's been there for a hundred years. It's a favorite restaurant. You know, what's the problem. Well, it's a sign. I mean that's the problem. And trying to work through that process with Mr. Howard was the conversation we had to have.

Q. Does Mr. Schrage typically get involved in those types of conversations?

A. No. But he does get involved when, you know, something gets the attention of the elected body or he wants to be there firsthand to here something.

Q. Did Crystal ask you or anyone in your department to put together legal papers?

MS. JOKERST: Object to form and foundation.

A. What are legal papers?

BY MR. MACROBERTS:

Q. Do you recall talking to Crystal about providing advice to her?

THE REPORTER: Providing what?

say for a sign, what is the standard turnaround to either approve or deny the permit?

A. I'd have to look in code, but I mean we try to be as expeditious as possible. We have some very hard well known ones that are building permits which we usually try for ten days. But, you know, sign permits, I can't remember if there's something in code or in policy that gives a specific date turnaround time. If there was, Dean and his team respond to that timeline.

Q. In December of 2023, is it fair to say that the permit hadn't been either approved or denied?

A. That is true.

Q. Why is that?

A. Because after -- Mr. Howard made it clear on the Thursday meeting that we had with him that he had no desire to change his sign at all. And I explained to him, everybody else explained to him those were the rules that were on the books. If he felt that the community wanted those rules to change, we would need to amend the code. I told him that I already had a sign code rewrite project scheduled for the coming year. This would speed it up significantly, but I was willing to

This one assigns it a permit number, gives the location, and it is being put into the system for Planning staff it looks like to review and act on. So this would have -- probably the permit techs would have entered this in. So the permit technicians when the applications come in review for completeness, and then they put it in the digital system if it doesn't come in digitally. So, as I mentioned earlier, Mr. Howard dropped his off in paper. So the techs would have taken those and put them into LAMA.

Q. Just to make sure I understand you, so a tech gets the application. They manually type it into the LAMA permit software?

A. If the applicant dropped it off in paper.

Q. Do you know -- do you see these regularly?

A. No.

Q. Have you ever seen one of these?

A. I have seen them before but not this one per se.

Q. Do you know why there's a permit summary for February 5th of 2024?

A. No.

Q. Is it typical for a permit to generate --

a permit application to generate a LAMA summary months after the permit application?

A. Will you please ask me that question again?

Q. Yeah. Is it typical to have a month's delay after a permit application has been made?

MS. JOKERST: Object to form and foundation.

A. It is not typical.

BY MR. MACROBERTS:

Q. If you would, please, turn to Deposition Exhibit 52.

A. Okay.

Q. Are you familiar with this?

A. Yes.

Q. Do you know who drafted this?

A. I believe Dustin Michelson. He's the one that signed it.

Q. Well, just because he signed it, does that mean he drafted it?

A. I can tell you I didn't draft it.

Q. Got it. Did you have any input on Deposition Exhibit 52?

A. I did not.

Q. Did you know this got sent out?

there's a total allowed amount.

Q. Did you initially think this was a mural or a sign?

A. I mean it -- it's painted on a wall. It -- the question was we had to sit down and start to look at those pieces and just start to pull them together. I don't like to make an off-the-cuff determination. We sat down with code, pulled the definition, said, yep, it met those components. And then we looked at that location and did the math to show like not only is it a sign but its size does not fit this location.

Q. On Sunday night when you received the text, it was still up in the air whether it was a sign or not, correct?

A. Correct.

MS. JOKERST: Object --

BY MR. MACROBERTS:

Q. And what is -- what do you have to look at to figure out if it's a sign or not?

A. Salina municipal code.

Q. And you still have to look at what the artwork is, correct?

MS. JOKERST: Object to form.

A. Yes.

BY MR. MACROBERTS:

Q. Why do you have to look at it?

MS. JOKERST: Object to form.

A. Well, one, you're going to look at it for its time and place and manner characteristics as per code, right? And you're going look at it to see if it meets the definition of a sign which talks about announce, direct attention or advertise.

THE REPORTER: Talks about?

A. Announce, directs attention or advertise.

BY MR. MACROBERTS:

Q. Are you able to do that with -- in other words, are you able to determine whether or not it announce, directs attention to or advertise without looking at the artwork?

MS. JOKERST: Object to form.

A. No.

BY MR. MACROBERTS:

Q. Is that why the permit process requires a picture or a rendering of what the artwork's going to look like?

MS. JOKERST: Object to form and foundation.

A. Ask me that question one more time,

BY MR. MACROBERTS:

Q. Correct.

A. No.

Q. Who did?

A. Dustin Herrs.

Q. Who made the ultimate determination that this was a sign, not a mural?

MS. JOKERST: Object to form and foundation.

A. The Zoning administrator makes that final determination, but both myself, Zoning administrator and the planner were in agreeance on the calculations done by Mr. Herrs.

BY MR. MACROBERTS:

Q. By calculations, are you referencing the size?

A. Yes.

Q. How did you measure or how did you come to an agreeance on the size of the artwork?

MS. JOKERST: Object to form.

A. We have historical applications that they've submitted, so we know the dimensions of the building. And the code says what ratio of square footage allows for total sign square footage. So based on those dimensions and that

page.

A. Okay. Okay.

Q. Do you recall saying that you needed a chance to look at it?

A. Yes, I said we needed a chance when we found out to look at...

Q. You said you needed a chance to look at it, right?

A. Yes.

Q. Are you referencing the Cozy artwork?

MS. JOKERST: Object to form.

A. I'm referencing the painted wall sign at the Cozy.

BY MR. MACROBERTS:

Q. And why did you tell the city commission about having Steve pausing the creation of the artwork?

MS. JOKERST: Object to form and foundation.

A. Without an application, which is actually what I say here, without an application, we don't have any details, right? What is the full size? I mean there were some outlines and stuff on the wall, but we didn't have a rendering or anything. So, at that time, it was, Steve, don't paint

anymore, because if for some reason this isn't allowed, I don't want you to go further and can we just halt -- have some information so that you're aware of how the rules would impact this artwork, this sign and then you can make some choices. So I just didn't want him going further and spending money or doing something that he may have to change or would choose not to go forward with. And because we didn't have any of that information, we needed a few minutes to get more information from him.

BY MR. MACROBERTS:

Q. When you say a few minutes, is that just a --

A. Yeah, I'm sorry. We needed a couple of days just to get that additional information.

Q. When you gave the -- do you remember giving a coffee house hypothetical to the city commission?

A. I do. Somewhere in here, yes.

Q. And I just want to make sure that I'm not missing a case. In there you mentioned that it was a Supreme Court case. Do you remember that?

A. I do.

Q. Was that correct?

the commission that it's more than just a word or a picture, that all these pieces lay together.

BY MR. MACROBERTS:

Q. So in order to make your coffee house/dove/peace hypothetical work, you would need to know what the artwork is on the outside of the building, right?

MS. JOKERST: Object to form and foundation.

A. We would have a rendering that was submitted that would describe what was going on the side of the building.

BY MR. MACROBERTS:

Q. Or somebody did it without a permit you would have to look at the artwork?

A. Yes.

MS. JOKERST: Object to form and foundation.

BY MR. MACROBERTS:

Q. And you need to know what's going on on the inside of the building, right?

MS. JOKERST: Object to form and foundation.

A. In some cases, yes.

BY MR. MACROBERTS:

BY MR. MACROBERTS:

Q. And what did you mean when you said so it's like if you can't say this one thing, do you identify the others?

MS. JOKERST: Object to form.

A. That's what I kind of just said. Like we have a definition of sign. It either is that or it's not. If you want to talk about the things it's not, then you have to find rules for those things and we don't have rules for those things. So that may be something the commission wants. Right now, we deal with signs. If you want to talk about murals, then that's a whole another thing, but it's not on the books right now.

BY MR. MACROBERTS:

Q. The regulation of murals is not on the books?

MS. JOKERST: Object to form.

A. No.

BY MR. MACROBERTS:

Q. Bad question. You don't regulate murals?

A. Correct.

Q. And maybe you've answered this so forgive me if you have. On page 25, you say sometimes saying something isn't something, maybe you need a

Q. Let's start with your memory and then we will -- I'm confident we have it. I just don't want to spend ten minutes digging through it.

A. Okay.

Q. So why is it?

MS. JOKERST: Object to form.

A. So, from my memory, which, you know, is not always a great way to review code, you should always look at it every time, it basically indicates that, you know, if it's something attention grabbing, it talks about the myriad of forms, whether it's text, emblem, pictorial, and that if it is on the outside of a building, if it announces, directs attention and advertises and is affixed, is near in the ground or portable, however, it kind of gives a list of those, if it's got those features and those all lead into it being a sign.

BY MR. MACROBERTS:

Q. I want to go back to your coffee house hypothetical. If Mr. Howard painted a coffee pot on the side of his wall with a picture of a dove and the word peace and it took up the entire wall, and assume he does not sell coffee, is that a sign?

MS. JOKERST: Object to form.

A. So I want to make sure I'm understanding you. You're giving me a hypothetical where we have a wall -- okay. We're going to use the Cozy and there's a coffee pot painted on it, a dove and olive branch and the word peace?

BY MR. MACROBERTS:

Q. Yes.

A. And he doesn't sell --

Q. Let's assume he does not sell coffee?

A. -- coffee at all.

Q. And he doesn't sell doves or --

A. And it's not --

THE REPORTER: Hold on. Hold on. One at a time. Give me your question. Let's assume?

BY MR. MACROBERTS:

Q. And he does not sell doves or olives.

MS. JOKERST: Object to form.

A. I guess I would say I could answer your hypothetical, but I'm not the one who's going to make that final determination, right. That stuff would come in the office and I would work with our planning staff. So I could tell you that answer, but it still is also going to come down to Dean Andrew standing behind that determination as

Zoning administrator. So I can pontificate all that I want, but it's not -- I'm not making that determination.

BY MR. MACROBERTS:

Q. Based upon your understanding of the code, keeping in mind what you told the city commission, is that artwork considered a sign that I just described to you?

MS. JOKERST: Object to form and foundation.

A. I would question whether it's a sign and then work with my staff and our legal counsel to verify my interpretation.

BY MR. MACROBERTS:

Q. Are you familiar with Andy Warhol?

A. Yes. He's a mid century artist.

Q. Are you familiar with his Campbell's Soup artwork?

A. Yes.

Q. Assuming the Cozy Inn did not sell Campbell's Soup, if Mr. Howard painted an exact replica of Andy Warhol's Cambell's Soup can on the side and it took up the entire wall, based upon your understanding of the code, is that a sign?

A. I am not comfortable making that --

just an airplane? What's the size of it? What's it say on the airplane? Is there text with the airplane? What's the size of the airplane? All those things feed into it being a sign.

BY MR. MACROBERTS:

Q. No text. Just a big silver airplane?

MS. JOKERST: Object to form and foundation.

A. There's no text. From the very limited information you've given me, it might not be a sign. But, again, I also am not the only person that would make that determination.

BY MR. MACROBERTS:

Q. I think you've told me the other people who helped make that determination. Have you mentioned everyone who makes that determination?

A. Yes.

Q. Does Mr. Schrage have any input into that determination?

A. No.

Q. Did he have any input into whether or not the Cozy was deemed a sign?

A. No. He was made aware of the situation as it evolved and as staff did its research, but he did not have influence on that decision.

It meets into a lot of different things.

Q. What else besides the two you just mentioned?

A. Well, it attracts attention and it announces and it's part of advertising.

Q. What does it announce?

A. The smell of the burgers.

Q. And is it your position or what you're in agreeance with that the burger-esque UFOs are too similar to the hamburgers that Mr. Howard sells on the inside?

MS. JOKERST: Object to form.

A. Yes, they're burgers.

BY MR. MACROBERTS:

Q. If you would, please turn to page -- or, excuse me, Exhibit 74.

A. Okay.

Q. Page 119?

A. I don't know if these have --

Q. They do. I'm sorry. They're kind of hard to see.

A. Oh, yeah, yeah, yeah. Okay. What page number?

Q. 119, please.

A. Okay.

Q. Do you recognize this?
A. Yes.
Q. What is it?
A. It looks like the back stage door for the Stiefel Theatre.
Q. Do you know when this painting was placed on the back side of the Stiefel Theatre?
A. I don't. I would -- I could hazard a guess, but I don't -- I don't know when it was placed there.
Q. Was it since you've been here in Salina?
A. Yes.
Q. Was it before or after November of '23, if you know?
A. I don't know. I think it was probably during a Boom! festival.
Q. So sometime in the last three years?
A. Um-hum.
Q. Excuse me. The Stiefel Theatre has concerts, right?
A. Um-hum.
Q. I'm sorry, yes or no?
A. Yes. I'm sorry.
Q. And during those concerts, performers oftentimes have guitars or ukuleles?

A. Um-hum. Yes.
MS. JOKERST: Object to form and foundation.
A. Yes, they could have guitars or ukuleles.
BY MR. MACROBERTS:
Q. This deposition exhibit page 119, a sign permit was not applied for for this artwork, was it?
A. No, it was not.
MS. JOKERST: Object to form.
BY MR. MACROBERTS:
Q. And it's your -- is it your position that page 119 that artwork is not a sign?
MS. JOKERST: Object to form.
A. I typically wouldn't take a position on this. Like it would normally come into Dean. He would review it and then give me feedback or if he even thought it needed to come to my attention.
BY MR. MACROBERTS:
Q. As you're sitting here now --
A. Okay.
Q. -- knowing what you know, page 119, that artwork is not a sign, right?
MS. JOKERST: Object.
THE WITNESS: Are you good, Amanda?

MS. JOKERST: Go.

A. Okay. I would have questions. I mean you're right, music can be performed with instruments, but, one, is it attracting your attention? Okay. It's something different. It's not part of the original wall. But is it directing you to something. The public can't get into that door. It's a stage door, and the front door is to access and make any kind of purchase on the other side of the building. So I don't know what it would be directing your attention to. Even if you tried to take the ukulele and kind of point it to something or guitar or whatever it is, they also don't sell instruments inside. They don't sell musical classes of any sort. She's also not playing the instrument which is usually what somebody would be doing with the instrument inside at a concert. And those are my first thoughts. There's no text that's, you know, saying anything or giving a direct message. Stage door, you're allowed in buildings to have, you know, egress type signage that denotes exits and stuff like that. And we have a minimal signage, a requirement, so that's -- that piece is allowed. So if we look at just the girl, the instrument and

the bird, at this glance of asking me in this situation, I don't think it would be a sign. But if that were a question, we -- you know, that's something we would talk about with legal.

BY MR. MACROBERTS:

Q. Bear with me for a moment. If you could, please, turn to Deposition Exhibit 77.

A. Okay. Okay.

Q. Do you recognize this?

A. Yes.

Q. What is it?

A. Schlotzsky's Deli.

Q. Is it the city's position that Exhibit No. 77, the artwork on the left-hand side, is a sign?

A. Yes.

MS. JOKERST: Object to form and foundation.

THE WITNESS: Sorry, Amanda.

A. Yes, it is a sign.

BY MR. MACROBERTS:

Q. Why is it a sign?

MS. JOKERST: Object to form and foundation.

A. Because they have a sign permit. No, it

department is a public building, and it's not asking you to come in and get a service or make any type of transaction. But I -- it's one that I don't think is cut and dry, and I think it would be worth a discussion with legal counsel.

BY MR. MACROBERTS:

Q. Which, again --

A. Yeah. But I'm --

Q. Yeah, yeah. Okay.

A. That's where I would go with that because it's not cut and dry.

Q. And what -- help me understand what's not cut and dry about this?

MS. JOKERST: Object to form.

A. Well, I think the fact that it's a public service. So I don't -- I'm not familiar with a case where that may come into advertising. So we would -- my thought is I would research more and see where that's been viewed in the past with other decisions.

BY MR. MACROBERTS:

Q. So if that picture or those pictures are deemed advertising, then it's a sign?

MS. JOKERST: Object to form.

A. That's one way you could look at it. I

Q. If you could turn to Deposition Exhibit 82, please. Are you there?

A. Yes, sir.

Q. Do you recognize this?

A. I do.

Q. What is it?

A. It's the side of the KU Medical School.

Q. It's the city's -- is it the city's position that the artwork on Deposition Exhibit 82 is not a sign?

MS. JOKERST: Object to form and foundation.

A. So I just want to make sure I'm understanding that the city's position is that is the sign.

BY MR. MACROBERTS:

Q. And because the court reporter can't take that down, if you could describe what you did to me or I can do it and then you can tell me if I'm wrong.

A. No, I'm happy to describe it. There's a large blue K and a large blue U and then below that School of Medicine, School of Nursing, a large Salina in black underlined and in blue University of Kansas in smaller letters with three

large lights over the top.

Q. That was a good description. Is that the only part of the wall at Deposition Exhibit 82 that is considered a sign?

A. Yes. That is the permitted sign area.

THE REPORTER: Can I have that objection again?

MS. JOKERST: Form and foundation.

THE REPORTER: Thank you.

BY MR. MACROBERTS:

Q. The colorful display that is both to the bottom right of the KU and the left of the KU, it's the city's position that that is not a sign?

MS. JOKERST: Object to form and foundation.

A. That is correct.

BY MR. MACROBERTS:

Q. Does -- in your opinion as you're sitting here and as director, does the artwork to the left of KU attract attention?

MS. JOKERST: I'll object to form.

A. So you're asking me if the artwork to the left attracts attention?

BY MR. MACROBERTS:

Q. Um-hum, that's correct.

A. It could.
Q. Does it?
A. For some people, yes.
Q. How about --
A. Yes.
Q. And same with the artwork to the bottom right of the KU, that attracts attention, also, correct?
A. Yes.
MS. JOKERST: Object to form.
MR. MACROBERTS: Do you mind if we have a two-minute break? I've just got to use the restroom again.
MS. JOKERST: Yeah. I'm okay with that.
MR. MACROBERTS: Let's go off the record for just a moment.
(THEREUPON, a recess was taken.)
BY MR. MACROBERTS:
Q. All right. I think we're back on. Thank you. If I could get you to turn to Exhibit No. 73, please. There's a series of photographs.
A. Okay.
Q. And I think it ends at 82?
A. Yes, I agree.
Q. Do you recognize it?

A. Yes, I recognize it.
Q. What is it?
A. It's a large painting on the grain silos here in town.
Q. Is that commonly referred to as the Mural at the Mill?
A. It is, yes.
Q. Was that -- forgive me if you answered this already. Was that painted before or after you coming to Salina?
A. It's been my time here.
Q. Okay. And based upon your understanding of the city code, that's not a sign, correct?
A. Correct, it is not a sign.
Q. And no permit was applied for, and there was no problem with them not applying for a permit, right?
MS. JOKERST: Object to form and foundation.
MR. MACROBERTS: I'll restate it because I asked two questions at once.
BY MR. MACROBERTS:
Q. You're not aware of anyone applying for a permit for this?
A. Correct. And a permit was not applied

for. A sign permit was not applied for.

Q. Why is this not considered a sign based upon your understanding of the code?

A. It doesn't meet the definition of a sign. So I mean we didn't review it. I didn't make this determination. But using the definition of a sign, this did not meet that definition.

Q. Forgive me because I've tried finding this and I don't know. Hopefully, you do. Is that grain elevator operational at all?

A. I don't think so.

Q. Is anything happening inside the grain elevator?

A. No.

Q. If somebody were to operate that grain elevator as a business and in the business they charged an admittance fee and kids were playing on the inside of that, based upon your understanding of the code that would be a sign then, correct?

MS. JOKERST: Object to form and foundation.

A. So they've turned it into something where kids are playing on the inside and that you're saying is my determination that automatically makes it a sign?

BY MR. MACROBERTS:

Q. No. I'll ask it again. If an operator charged money for kids to come inside, pick a daycare or a recess zone, something like that, this Mural at the Mill would then be considered a sign under your understanding of the code, correct?

MS. JOKERST: Object to form and foundation.

A. It would be enough to catch my attention that I would bring it to my staff and ask them to research and make that determination.

BY MR. MACROBERTS:

Q. Is it fair to say that the reason it would raise questions because in your mind it would encourage a commercial transaction?

MS. JOKERST: Object to form.

A. No. I would say it would be advertising something because the use of the building had changed.

BY MR. MACROBERTS:

Q. All right. I'm asking you to please turn to Deposition Exhibit 76.

A. Okay.

Q. Do you know what this is a picture of?

together and that whole strip. But I mean that's my initial assessment without being there and seeing more details. But from this picture, that would be my initial thoughts.

Q. The permit that was issued was after you said the Cozy case. Is that in November of 2023 or is that in February of 2024?

A. It probably would have been in November. We got several calls from people around town as soon as social media had chatter about the Cozy case. Suddenly, everybody wanted to turn everybody in. So we got inundated with several different signs around town that we weren't aware of and went through and dealt with those.

Q. Were you overwhelmed with calls?

A. No. I mean it was a handful, though and ones we didn't know. But I mean they kind of came in a barrage probably within that following week the city commission meeting.

Q. As far as you were aware, did anybody complain about the Cozy's artwork?

MS. JOKERST: Object to form.

A. As in issue a formal complaint? Like in writing or something?

BY MR. MACROBERTS:

Q. Well, let's start with that. In terms of did anybody file a formal complaint against the Cozy or Mr. Howard because of the mural?

A. No.

Q. If you would please turn to Deposition Exhibit 75. Let's start with page 300. Do you know what that's a picture of?

A. The Original Grande.

Q. Is that the same with pages -- well, the rest of the deposition exhibit?

A. It looks like it, yes.

Q. Is it the city's position that the -- well, let me direct you to page, oh, man, 298.

A. Okay.

Q. The Feelin' Taco-tastic and Fuel Your Inner Fiesta, do you see those?

A. I do.

Q. Is it the city's position that those two displays are considered signs?

A. Yes.

Q. Why is that?

A. Because they directly relate -- well, they meet the definition of the sign code as we've talked about several times. They attract attention. They -- they're specifically

apologizing for cutting you off. I thought the question was done.

A. So you saying there's just two doves painted there at the Mexican restaurant?

BY MR. MACROBERTS:

Q. Where the -- yes, where the Feelin' Taco-tastic and Fuel Your Inner Fiesta is in this exhibit?

A. I would go back to the definition of the sign code, but it would probably not be a sign. I don't know what else more is there, if there's text, if it's just a dove, I don't know what's on the other side, but if they've got dove tacos, but I'm really hoping they don't, but probably -- probably not.

Q. All right. Let's assume no dove tacos and no text, just pictures of a dove?

MS. JOKERST: Object to form.

A. By my interpretation of the definition sitting here at this table with what I know, are you announcing something with the dove? Not really. I mean I suppose you've initially grabbed attention, but you're not announcing anything relevant. You're directing attention to, is the dove pointing to something or flying toward

something, let's say it's not. So you're not directing attention to. And what are you advertising? We're not advertising any good or service. I mean they don't have a -- they're not selling doves with every meal. I mean they're truly not related from what I know in this hypothetical.

BY MR. MACROBERTS:

Q. So it would not be a sign?

A. Based on the hypothetical you gave me, I would not make that -- I would not think that's a sign.

Q. You mentioned previously that you were, and I'm paraphrasing, considering amending the code before the Cozy Inn issue?

A. Um-hum.

Q. Is that a yes?

MS. JOKERST: Object to form.

A. I'm sorry. Yes.

BY MR. MACROBERTS:

Q. And when did that originally come onto your radar?

A. Within 2023, 2022. Technology's changed a lot around signs, too, particularly with lighting and lumens and materials being used for

the purpose section of the sign code?

A. Um-hum.

Q. Is that a yes?

A. Yes.

Q. Is that Deposition Exhibit page -- well, we'll reference it this way. At the top, it will say document 16-3, page 5 of 31 in blue.

A. What does it say in the blue, I'm sorry?

Q. How about this. Try to go to section 42-500 of the code.

A. Okay. I'm there.

Q. Do you mind if I look real fast?

A. Um-hum.

Q. This is what I was referencing.

A. Oh, okay. Thank you.

Q. Are you aware of any traffic accidents that have resulted from the display that's at the Cozy?

A. I am not.

Q. Are you aware of any pedestrian accidents that have resulted from the display at the Cozy?

A. I am not.

Q. Are you aware of the property values decreasing as a result of the display at the Cozy?

A. I am not.

Q. Are you aware of the local economy getting worse because of the display at the Cozy?

A. I am not.

Q. Previously, you had mentioned aesthetics. Do you remember that?

A. Um-hum.

Q. Is that a yes?

A. I do.

Q. The e-mails that we talked about that were sent to the signs e-mail address, do you remember those?

A. I do.

Q. Is it fair to say that those e-mails suggested that the mural was aesthetically pleasing?

MS. JOKERST: Object to form.

A. Several of those do. I don't know about every one of them. But in general, yes, that is a sentiment.

BY MR. MACROBERTS:

Q. In any of those e-mails that we talked about, is there anybody who thought the mural at the Cozy was aesthetically displeasing?

MS. JOKERST: Object to form.

A. Of those e-mails, no.

CERTIFICATE

STATE OF KANSAS

COUNTY OF SHAWNEE

I, Sandra S. Biggs, a Certified Court Reporter, Commissioned as such by the Supreme Court of the State of Kansas, and authorized to take depositions and administer oaths within said State pursuant to K.S.A 60-228, certify that the foregoing was reported by stenographic means, which matter was held on the date, and the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of the same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and seal this 19th day of September, 2024.

SANDRA S. BIGGS STATE OF KANSAS CERTIFIED SHORTHAND REPORTER

Sandra S. Biggs

Sandra S. Biggs, C.C.R No. 0716

Exhibit N
Herrs 30(b)(6) Deposition Excerpts

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

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COZY INN, INCORPORATED, d/b/a
THE COZY INN; STEPHEN HOWARD,
Plaintiffs,

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vs. Civil Action No. 6:24-cv-01027-TC-ADM

.

CITY OF SALINA, KANSAS,
Defendant.

.

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DEPOSITION OF
CORPORATE REPRESENTATIVE
DUSTIN HERRS,

taken on behalf of the Plaintiffs, pursuant to Notice to Take Deposition, beginning at 9:27 a.m. on the 30th day of October, 2024, at Clark, Mize & Linville, 129 S. 8th Street, in the City of Salina, County of Saline, and State of Kansas, before Sandra S. Biggs, Kansas CCR No. 0716.

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some examples.

Q. Okay.

A. Not all inclusive, but those are some of the ideas.

Q. Can a painted wall sign be unsecured?

MS. JOKERST: Object to scope.

A. Probably not.

BY MR. SHAW:

Q. Does the city have any records of the number of accidents caused by unsecured signs?

MS. JOKERST: Object to scope.

A. I don't know.

BY MR. SHAW:

Q. Can a painted wall sign be less secure than a painted mural?

MS. JOKERST: I'll object to scope.

A. No.

BY MR. SHAW:

Q. Okay. How does the city define the term clutter as used in this subsection?

MS. JOKERST: Object to scope.

BY MR. SHAW:

Q. Let me rephrase it then. What is a cluttered sign?

MS. JOKERST: I'll object to form of the

of signs so that you don't have sign clutter that can become distracting. It doesn't make it hard to read the signs because the more signs you have, the more information there is, sometimes the harder it is to really soak in information that you're trying to and it can become distracting when you're focusing on signs rather than driving or walking. And by limiting the number of signs, you reduce clutter. By limiting the size of signs, you limit signs that might be a distraction. By limiting or prohibiting, rather, like blinking, flashing, strobing kind of signs --

Q. Hold on. Let me stop you. Is the city aware of any facts showing that the sign code, in fact, enhances traffic safety, has succeeded in its objective?

MS. JOKERST: Object to scope.

A. I don't know how you would even do a study like that if you have these design standards, because you wouldn't have a before and after picture to evaluate.

BY MR. SHAW:

Q. Is the city aware of any other municipality that has conducted any sort of before and after of its sign code to show if it has, in

fact, enhanced traffic safety?

MS. JOKERST: Object to scope.

A. Yeah, I don't -- I don't know.

BY MR. SHAW:

Q. Okay. And in a similar vein, is the government aware of any facts that would show that the sign code has, in fact, succeeded in enhancing pedestrian safety?

MS. JOKERST: Object to scope.

A. I think just like with the traffic safety question, you'd have to have a before and after. So you'd have to have -- and since we have the sign code that we've consistently administered, you don't really have a before and after picture. You just have what we have.

BY MR. SHAW:

Q. Okay. And does the government or is the government aware of any facts showing that the sign code has succeeded in promoting property values?

MS. JOKERST: Object to scope.

A. Since the sign code regulations have been administered consistently since their inception which has been a very long time, I don't -- again, you won't -- there's no way to have a before and

though, long predates that boom in development. Is that correct?

MS. JOKERST: Object to scope.

A. It does. And it predate -- the BID is not as old as the sign code, but it also predates the recent reinvestment, but I do think it contributes to it.

BY MR. SHAW:

Q. Okay. Section 42-500, when was that enacted?

MS. JOKERST: Object to scope.

A. 2017.

BY MR. SHAW:

Q. Was there a different purpose section in effect before 2017?

MS. JOKERST: Object to scope.

A. I don't know. I didn't research that.

BY MR. SHAW:

Q. Okay. Is the city aware of any facts showing that painted wall signs are more harmful to aesthetics than painted murals?

MS. JOKERST: Object to scope.

A. No.

BY MR. SHAW:

Q. Is the city aware of any facts that would

show that painted wall signs are more detrimental to pedestrian safety than painted murals?

MS. JOKERST: Object to scope.

A. Any specific studies or like...

BY MR. SHAW:

Q. Any facts that would show that a painted wall sign is more detrimental to traffic -- to pedestrian safety than painted murals?

MS. JOKERST: Object to scope.

A. No.

BY MR. SHAW:

Q. Is the government aware of any facts that would show that painted wall signs are more detrimental to traffic safety than painted murals?

MS. JOKERST: Object to scope.

A. I think the fact that signs by their definition attract your eye in a way to announce, direct attention to or advertise does change the character of a sign in relationship to or contrasted to a mural, a painted mural and that that could have impacts on traffic safety.

BY MR. SHAW:

Q. So you say it could have impacts on traffic safety. Is the city aware of any facts showing that it, in fact, does have impacts on

traffic safety?

MS. JOKERST: Object to scope.

A. I didn't research that in preparation.

BY MR. SHAW:

Q. Okay. And same question there for is the government aware of any facts showing that painted wall signs have a more detrimental affect on property values than paint murals?

MS. JOKERST: Object to scope.

A. Yeah, I wasn't aware to research that particular topic, so I haven't prepared for that.

BY MR. SHAW:

Q. All right. So we're mainly talking about the sign code here, Section 42-500 and subsequent sections here. I want to pivot now to the Business Improvement District regulations, so that's Section 2 -- I think like 201 of the city code?

A. I don't have that one.

Q. You don't have it?

A. No, I don't.

Q. Oh, okay. So --

A. Which -- I guess where are we at because like I'm trying to figure out --

Q. I'm talking about the BID code section

Q. And is this the e-mail you sent to the planning group that you're referring to right now?

A. Yes.

Q. Okay. So it was there on November 6th that Mr. Anderson informed Miss Driscoll?

A. That's my understanding.

Q. All right. And what action did the city take upon learning about the mural being painted at The Cozy Inn?

A. I contacted Mr. Howard and invited him to come to my office to speak about it. He did. He accepted my invitation. He came to my office and we talked. I explained to him our concerns with the sign that he was in the process of painting on his north wall of The Cozy Inn property and explained to him the sign limitations that are in the C-4 district and how it appeared his sign was exceeding the maximum allowable sign area for the C-4 district.

Q. And that was all on November 6th?

A. That was on November 6th.

Q. All right. When you first contacted Mr. Howard, had the city already determined that the mural at the Cozy Inn was a sign?

A. Yes.

Q. When was that determination made?

A. On the 6th of November.

Q. And who made that determination?

A. It was -- I assign it to a collective decision. We pulled up a photograph of it and --

Q. Can I stop you real quick. When you say we pulled up, who is we?

A. Sure. It would have been the planning staff that was in that meeting at the time which would have been Miss Driscoll, it would have been myself, it would have been Mr. Andrew and Mr. Michelson.

Q. Okay. So go on. That group of people you just mentioned and you were at a meeting. You pulled up a picture of the kind of the mural. Then what happened?

A. And we viewed it and it had met the definition of a sign. And we were all like we need to get ahold of Mr. Howard right away, make sure he's aware of this in case he wasn't aware of this, like we didn't want him to get the whole sign up and then that be a problem, so we wanted him to be aware of it as soon as possible since he was in the process of having the sign painted. So we contacted him right away just so that he

A. You could make the determination by walking up to it which I followed up with.

Q. Fine. So I'll rephrase that. Could the city have made that determination without having seen the mural at the Cozy Inn, whether it's in a picture or in real life?

A. I don't know.

Q. I'm sorry. What was that?

A. I'm not sure.

Q. Okay.

A. I mean we typically review signs by looking at the dimensions of the signs that are being proposed, and usually, its self-evident that it's a sign because it fits those attributes because of the character and elements of the sign which you have to look at to determine.

Q. Just so I'm clear --

A. Sure.

Q. -- I'm not sure I was following.

A. All right.

Q. You have to be able to look at the potential sign to determine if it is a sign?

A. Yes. You have to look at the character and elements of the sign.

Q. Okay. Did the city determine that the

mural at the Cozy Inn announces something?

A. Yes.

Q. What did the city determine that it announced?

A. It proclaims or declares to not fear the smell.

Q. Okay. Was any other part of the mural determined to be an announcement?

A. I mean The Fun is inside is making a proclamation of a sort, so that would be an announcement. It's announcing that there's burgers here because there's burgers on -- on the pictorials, representations of the sign.

Q. Were any other elements of the mural considered an announcement by the city?

A. I think those are the main ones that jump out at you anyway.

Q. All right. Did the city determine that The Cozy mural directs attention to something?

A. Yes. There's an arrow that points towards the pickup window and the entry door into the restaurant.

Q. Okay. Did the city determine any element of the mural other than the arrow directed attention?

A. Well, The Fun is inside directs you to inside, invites you inside and to go inside.

Q. Okay. And did any other elements of the mural direct attention to something?

A. Those would be the main ones I could think of.

Q. Okay. And did the city determine that The Cozy mural advertises something?

A. Yeah. So one of the products that they sell is burgers, and it has pictorial representations of burgers on the outside of the building.

Q. Okay. Is any other element of the mural an advertisement in the city's estimation?

MS. JOKERST: I'll object to form.

A. I mean the whole thing kind of works together as a cohesive composition for the sign -- for the sign as an advertisement, because there's a lot of burgers and there's a lot of ketchup and mustard.

BY MR. SHAW:

Q. Okay. So then is it the city's position the entire mural is an advertisement?

A. The city's position is the entire painting is a sign that has advertisement in it.

painting would qualify as a sign under the code, it would need to see a rendition of the proposed painting?

MS. JOKERST: Object to form and scope.

A. We would need to see a rendering of the proposed sign if it wasn't already there. I mean we'd have to see -- see it in some way to determine if the character and elements fit the definition of a sign.

BY MR. SHAW:

Q. All right. If you could flip now to Exhibit 8.

A. Are we done with 40? Keep it out or put it away.

Q. You can keep it out.

A. Okay.

Q. We'll have to put it back.

A. Sure. Okay. I'm at Exhibit 8.

Q. Okay. Is Exhibit 8 a copy of a Sign Permit Application submitted by Mr. Howard on behalf of The Cozy Inn?

A. Yes.

Q. And what day did the city receive this application?

A. It is dated 11/13/23 if that's the day we

different in this rendering than what's on the wall currently.

BY MR. SHAW:

Q. What's on the wall currently is not complete, though. Is that correct?

A. Correct. So that's why I don't know.

Q. Okay. Is it the city's position that the mural depicted in that image does not depict burger-esque flying saucers piloting by aliens?

A. The city's position is that we are indifferent to if it depicts burgers that are floating around, if they're being thrown around, if they're flying around, if they're being piloted by aliens or something, it doesn't matter to us.

Q. All right. When that rendition was submitted to the city, did the city reevaluate whether or not the mural at the Cozy Inn was a sign?

A. No.

Q. Did the city grant this permit application?

A. We put this permit application on hold and did not process it.

Q. Okay. Just so I'm clear, by putting it on hold and not processing it, does that mean this

application was neither granted or denied?

A. Correct. So when we met with Mr. Howard, we informed him, and when I say when we met with him, when we met with him on November -- I've got to get that, November 6 of 2023, we informed him that his proposed sign exceeded the sign maximum limitation in the C-4 district and that staff was unable to approve. And in talking with him about potential options, we expressed that we could potentially look at a text amend, and that was expressed at the meeting that we had with him later at the Smoky Hill Museum. And he seemed responsive to the idea of exploring a text amendment which would be a public process to potentially change the sign code to potentially allow signage like what Mr. Howard was proposing. And so we had -- even though we were not able to approve the sign and we informed Mr. Howard of that, we were open to trying to come up with a potential sign amendment that could allow something similar to what he was being -- what he was proposing.

Q. So at that meeting, you mentioned at the Smoky Hill Museum?

A. Um-hum.

Q. Did the city tell Mr. Howard to submit a Sign Permit Application?

A. Yes.

Q. And at that same meeting, did the city tell Mr. Howard to submit a Certificate of Compatibility Application?

A. Yes. So we wanted to have the sign application to know what his final vision was so that when we were working with the public we knew what the target was. Like this was his idea. We would have something real and applicable that when we were looking at potentially amending the sign code to apply it and say does this fit within the sign code, do we want it to fit in the sign code and to make sure that if we wanted this to be a permitted sign, when I say we, I mean the community at large because this would be a public conversation, what regulations would be appropriate and so that we had a target or a goal if this was something we wanted to permit to create our sign code around or our sign code amendment around.

Q. So if I'm understanding, the city wanted to get his final, I guess, rendering so that they could have an idea of what his vision was which

would enable a code amendment to incorporate that vision? Is that what you're saying?

A. Potentially. Yes. I mean that was going to be a public conversation. It wasn't going to be a decision by staff, but it was going to be a public conversation that we would have with a consultant that we had engaged in to go through this exercise to see if this is something that the city and the community wanted for the community in the downtown area or just anywhere in the community.

Q. You just mentioned a consultant. Is that Wendy Moeller that you're referring to?

A. Yes, that is correct.

Q. Had she been retained on the date that that meeting at the Smoky Hill Museum took place?

MS. JOKERST: Object to form and scope.

A. I do not believe so.

BY MR. SHAW:

Q. Okay.

A. She was hired at a later date with the understanding that Mr. Howard wanted to work through a public process of potentially looking at a sign code amendment that could allow his sign.

Q. When was this application placed on hold?

A. Well, when it came in, it was essentially put on hold because we couldn't approve it.

Q. Okay. So the city placed it on hold immediately?

A. Yes, because we could not approve it and we were looking at other solutions, potential solutions. City staff did not have the authority under the current sign code to permit the sign. And in order to permit the sign, it would require an amendment to the sign code.

Q. So if you could turn to Exhibit -- give me one moment, Exhibit 9. Is Exhibit 9 a Certificate of Compatibility Application filed by The Cozy Inn?

A. Yes.

Q. And is it for a Certificate of Compatibility for the mural at the Cozy Inn?

A. Yes.

MR. SHAW: We'll admit Exhibit 9.

BY MR. SHAW:

Q. Was this submitted by Mr. Howard at the same time as the Sign Permit Application?

A. It appears so. It has the same November 13th, 2023 date on it.

Q. Okay. Was a -- I'm going to say DRB, but

A. Yes.

Q. Was The Cozy Inn ever provided with a written statement of the reasons of denial?

MS. JOKERST: Object to form and scope.

A. The Cozy Inn was informed before the application was even applied for and the sign permit was applied for that the sign was -- did not conform to the C-4 regulations and is not something the staff had the authority to permit.

BY MR. SHAW:

Q. Was that a written statement?

A. It was not a written statement. It was a verbal statement in a meeting that I had with Mr. Howard on November 6th and then also at a later meeting that took place at the Smoky Hill Museum.

Q. Was The Cozy Inn provided with any recommendations about potential changes to the project that might allow it to be approved?

A. I did mention to Mr. Howard that he could reduce the signage -- the size of the signage to an area that would fit within the 63 total square feet that he had, that he could either reduce the proposed sign down to the remaining nominally 10 square feet that he has or he could remove some existing signs as well but reduce his total

CERTIFICATE

STATE OF KANSAS

COUNTY OF SHAWNEE

I, Sandra S. Biggs, a Certified Court Reporter, Commissioned as such by the Supreme Court of the State of Kansas, and authorized to take depositions and administer oaths within said State pursuant to K.S.A 60-228, certify that the foregoing was reported by stenographic means, which matter was held on the date, and the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of the same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and seal this 13th day of November, 2024.

SANDRA S. BIGGS STATE OF KANSAS CERTIFIED SHORTHAND REPORTER

Sandra S. Biggs

Sandra S. Biggs, C.C.R No. 0716

Exhibit O
Herrs Deposition Excerpts

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

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COZY INN, INCORPORATED, d/b/a
THE COZY INN; STEPHEN HOWARD,
Plaintiffs,

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vs. Civil Action No. 6:24-cv-01027-TC-ADM

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CITY OF SALINA, KANSAS,
Defendant.

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DEPOSITION OF
DUSTIN HERRS,

taken on behalf of the Plaintiffs, pursuant to Notice to Take Deposition, beginning at 1:00 p.m. on the 12th day of September, 2024, at Clark, Mize & Linville, 129 S. 8th Street, in the City of Salina, County of Saline, and State of Kansas, before Sandra S. Biggs, Kansas CCR No. 0716.

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A. I don't recall.

Q. Were there further discussions within the planning staff about the Cozy Inn mural?

MS. JOKERST: Object to form.

A. I guess I don't understand what you're asking.

BY MR. SHAW:

Q. So after this e-mail was sent out on looks like November 6th --

A. Okay.

Q. -- were there further discussions amongst the planning staff about the Cozy Inn's mural?

MS. JOKERST: Object to form.

A. Yes.

BY MR. SHAW:

Q. Did any of those discussions involve reevaluating whether or not it was a sign?

A. No.

Q. Okay. So by the date of this e-mail, it was determined it was a sign and it was never reconsidered. Is that correct?

MS. JOKERST: Object --

A. Correct.

THE REPORTER: Can I get that again, Amanda?

potentially a modified sign code if a text amendment were created. Specifically, if text amendment were added that not only counted the exterior wall of the building that faced the street but also the wall that faced the parking lot. If a text amendment were made to allow that frontage facing the parking lot which is where the painted mural sign is, if that were to be part of the equation, would it be sufficiently large enough to allow the sign that Mr. Howard was painting.

Q. As the code is currently written, would it allow using that side lot line in the calculation of frontage?

A. No.

Q. Okay. So it's only the, for lack of a better term, the frontage on the front of the building?

A. Correct.

Q. Okay.

A. So this would require a text amendment, but we were trying to look at potential options for Mr. Howard.

Q. All right. So if I am reading the equation down there correctly, is that saying that

drafting this letter?

A. No.

Q. Okay. But you were aware that this letter had been sent to Mr. Howard?

A. Yes.

Q. Okay. Are you familiar with a business called The Yard?

A. Yes.

Q. Okay. Do you know what line of business The Yard runs?

A. Baseball training.

Q. Okay. Can you open Exhibit 25, please?

A. Please tell me other people struggle with this. I'm feeling kind of foolish here. Oh, it's a big one. That's why.

Q. Yeah.

A. Okay. With this being a large document, is there something specific you want me to look at?

Q. Yeah. So just as you look at those first couple of pages there, can you identify what this document is?

A. It appears to be a staff report for the demolition and renovation of existing buildings located at the northwest corner of 4th Street and

Walnut.

Q. What page were you looking at?

A. The agenda page.

Q. Okay.

A. 158.

Q. Do you know if you worked on the staff report for this Design Review Board meeting, starting at page 166?

A. Thank you. I may have. I don't remember --

Q. Okay.

A. -- specifically.

Q. Can you go to page 170?

A. Yes.

Q. Would you read the section titled Proposed Replacement Construction, and it runs onto the next page.

A. Okay. Okay. So how far do you want me to read?

Q. Until that section ends. So when it sentences Zoning Issues, you can stop.

A. Okay. Okay.

Q. Based on this proposed replacement construction that the staff report describes, how many buildings are there at this facility?

A. Three, A, B and C.
Q. All right. And are buildings A and C existing buildings that were being refurbished?
MS. JOKERST: Object to form.
A. I don't recall. I'd have to -- is there an attachment that describes that?
BY MR. SHAW:
Q. Maybe.
A. Okay. I have it. Building A and building C are existing.
Q. Okay.
A. Building B was proposed.
Q. All right. And there on page 170, is it saying that building B would be built in between those two buildings?
A. Yes.
Q. Are you looking at the site plan? What page?
A. 183.
Q. 183. Okay.
A. Aaron, I need some more water.
Q. All right. So, page 183, that is a overhead site plan. Is that a correct description?
A. Yes.

just say they owned that parking lot and they built a structure like this adjacent to the Cozy. Would that be -- would that transform the mural where it currently is to being inside of a building?

A. I'd have to --

MS. JOKERST: Object to form and foundation.

A. I'd have to see the plans for that.

BY MR. SHAW:

Q. I see. The murals depicted in Exhibit 32 here, do they depict baseball?

A. Yes.

Q. And I believe you testified that The Yard is a baseball training facility?

A. Correct.

Q. Does this mural announce The Yard?

MS. JOKERST: Object to form and foundation.

A. (Pause).

BY MR. SHAW:

Q. Are you thinking or --

A. No, I am.

Q. Okay.

A. I'm just -- in what way?

MS. JOKERST: Object to form.
BY MR. SHAW:
Q. Do you know if a Certificate of Compatibility was ever applied for this mural?
MS. JOKERST: Object to form.
A. No.
BY MR. SHAW:
Q. Do you know if a violation was ever -- or a citation was ever given to The Yard over this mural?
MS. JOKERST: Object to form.
A. This sign is not in violation, because it is a sign oriented toward the inside of building B.
BY MR. SHAW:
Q. Does the sign code use orientation at all in the regulation of signs?
MS. JOKERST: Object to form.
A. That specific word?
BY MR. SHAW:
Q. Yes.
A. I don't know.
Q. Does it use that concept?
A. Yes.
Q. Do you know where?

Q. So is it the staff's opinion that buildings A, B and C are all one building?

A. No, they are adjacent buildings.

Q. So they're adjacent buildings. Which building is the mural in Exhibit 32 located inside of?

A. The north wall of building B.

Q. I see. So the north wall of building B is this brick wall several feet away from building B?

A. They are --

MS. JOKERST: Object to form.

A. They are adjacent and connected.

BY MR. SHAW:

Q. Do you know if the structure of building B actually touches building A?

A. There are elements of B that touch building A, yes.

Q. Is that element just netting?

MS. JOKERST: Object to form.

A. I don't know.

BY MR. SHAW:

Q. Can you turn to Exhibit 25 and specifically page 183 of Exhibit 25?

MS. JOKERST: Did you say 183?

MR. SHAW: Yes, 183.
MS. JOKERST: Thank you.
BY MR. SHAW:
Q. Are you there?
A. I have it, yes.
Q. Is this rendering depicting a gap between buildings A and B?
MS. JOKERST: Object to form and foundation.
A. Building B appears to be adjacent to building
A.
BY MR. SHAW:
Q. When you say adjacent, what does that mean?
A. Directly next to.
Q. Okay. Does it mean touching?
A. Like overlapping. They do touch.
Q. Do the physical buildings touch?
MS. JOKERST: Object to form.
BY MR. SHAW:
Q. Or I'll ask it this way. Do you see building B, does it depict where the pillars are?
A. Yes.
Q. Are any of those pillars touching

BY MR. SHAW:

Q. As well as the side wall that is depicted there.

A. Okay. So as I recall, this property is zoned I-2 which doesn't --

THE REPORTER: I-2?

THE WITNESS: I-2.

THE REPORTER: Thank you.

A. Which is our light industrial zoning district and has different sign allowances and requirements and regulations than Mr. Howard's, for example. And one of the differences is there's not a limitation that I recall on the number of signs you can have. And so what was done is a rectangular box around the various elements and those were all added together into an aggregate.

BY MR. SHAW:

Q. So you didn't do the entire mural, just the elements of the mural individually?

A. Correct.

MS. JOKERST: Object to form and foundation.

BY MR. SHAW:

Q. Did you perform a similar analysis at the

Cozy' mural where you took the different elements and calculated them individually?

MS. JOKERST: Object to form and foundation.

A. No, because Cozy Inn was already up against their limit of the total signs they could have, and so I was trying to figure out a way to allow an additional sign. But I knew that if I did an analysis of all the different elements, one, it would be very, very difficult and, two, it would be unpermitable because the regulations have limits on number of signs in the C-4 district.

BY MR. SHAW:

Q. If you had measured the Sharp mural as basically the whole wall, the rectangle the way you did with the Cozy, would it have been within the size limits for that district?

MS. JOKERST: Object to form.

A. I don't know.

BY MR. SHAW:

Q. Okay. How did you measure the frontage of this building?

A. It has two frontages. It has frontages on 9th Street and the street to the east as well -- or excuse me, yeah, to the east.

CERTIFICATE

STATE OF KANSAS

COUNTY OF SHAWNEE

I, Sandra S. Biggs, a Certified Court Reporter, Commissioned as such by the Supreme Court of the State of Kansas, and authorized to take depositions and administer oaths within said State pursuant to K.S.A 60-228, certify that the foregoing was reported by stenographic means, which matter was held on the date, and the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of the same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and seal this 20th day of September, 2024.

Sandra S. Biggs

Sandra S. Biggs, C.C.R No. 0716

SANDRA S. BIGGS STATE OF KANSAS CERTIFIED SHORTHAND REPORTER

Exhibit P
Andrew Deposition Excerpts

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

COZY INN, INCORPORATED, d/b/a
THE COZY INN; STEPHEN HOWARD
Plaintiffs,

vs. Civil Action No. 6:24-cv-01027-TC-ADM

CITY OF SALINA, KANSAS,
Defendant.

DEPOSITION OF
DEAN ANDREW,

taken on behalf of the Plaintiffs, pursuant to Notice to Take Deposition, beginning at 9:02 a.m. on the 30th day of September, 2024, at Clark, Mize & Linville, 129 S. 8th Street, in the City of Salina, County of Saline, and State of Kansas, before Sandra S. Biggs, Kansas CCR No. 0716.

Q. Okay. Is there any reason you can't testify here today?

A. I can't think of any.

Q. All right.

A. Seasonal allergies have spiked, and I'll muddle through the best I can. If I lose my voice, I'll just need to drink some water.

Q. All right. And if at any time you need to take a break, that is fine. Just let me know. The only condition on that would be that if there's a question pending that you answer that question first and go to break.

A. Okay.

Q. What is your current job title?

A. I'm the Planning and Zoning administrator for the City of Salina.

Q. And how long have you had that job?

A. That specific job since 2009. I've been employed as a planner by the city for 37 years.

Q. Okay. So, since 2009, you've been the zoning administrator. Before that, you were just a planner?

A. I've had various titles.

Q. Okay.

A. But I've always worked in the Planning

direct attention to or advertise?

MS. JOKERST: Object to form.

A. A pictorial representation that had nothing to do with or no connection to a use or a business that is located on the premises where that pictorial representation is located.

BY MR. SHAW:

Q. So I guess just for an example, would a picture of a cross be considered a pictorial representation?

MS. JOKERST: Object --

A. A picture of a cross.

BY MR. SHAW:

Q. Yes, or a painting, a image?

A. Or a cross itself.

Q. What does a cross itself mean? Do you mean like an actual physical --

A. I'm talking about a physical cross. Most of our churches don't put up pictures of crosses. They put up crosses.

Q. Okay. Well, if a church put up a cross, would that count as a pictorial representation or something else?

A. It would count as a pictorial representation.

Q. Okay. Would it also be considered a sign?

A. It would be considered a symbol, not a sign.

Q. Does a cross not typically convey a message about the building's religious affiliation?

MS. JOKERST: Object to form.

BY MR. SHAW:

Q. You may answer.

A. Not exclusively. But primarily, churches of the Christian faith are the ones that are interested in placing a cross on their building or in another location on their property.

Q. So if I understand a cross on a church is not considered a sign, just a symbol?

A. It is something that our sign code does not count towards the sign area allocated to that church.

Q. Why does it not count the cross?

A. Because it's a symbol.

Q. If you'll look at 42-764, does it not include symbol as part of the definition of emblem?

A. It does.

Q. So why are crosses not considered signs and only symbols?

A. I didn't say they were not considered signs. I said they don't count towards a sign allocation for the church.

Q. Okay. Why do they not count towards the sign allocation?

A. Because our code says so.

Q. Where does it say that?

A. It doesn't say it in that section.

Q. Do you know which section it says it in?

A. It has been the longstanding interpretation for the City of Salina that those are symbols just as flags don't count towards a sign allocation for a property.

Q. Well, why don't flags count towards the sign allocation?

A. Because they're not included in the sign calculations.

Q. But why are they not included in the sign allocations?

A. Because there's no requirement to obtain a sign permit to erect a flag.

Q. Why is there no requirement to obtain a sign permit to erect a flag?

THE REPORTER: Thank you.

BY MR. SHAW:

Q. Have you determined the difference between a commercial and non-commercial flag?

A. Have I in my experience?

Q. Well, yeah, I guess I can ask that question. Have you ever made that determination?

A. No.

Q. If a business were to fly a flag such as the McDonald's flag we discussed earlier, would that be exempt under the code?

A. Not as subsection 1 is written.

Q. Okay. So a business flag like the McDonald's flag would be regulated and require a sign permit. Is that correct?

MS. JOKERST: Object to form.

A. I would just be speculating on that. Because in my 37 years, I've never seen a McDonald's or any commercial flag that has come before us.

BY MR. SHAW:

Q. Okay. What about a -- well, let me ask you this. Have you ever seen a Kansas City Chiefs flag?

A. I have. I drive by one.

Q. Would those be considered commercial flags?

A. No.

Q. Why not?

A. Because they are just expressing that property owner's support for their team.

Q. Do you know if the Kansas City Chiefs are a commercial enterprise?

MS. JOKERST: Object to form.

A. Well, I know that the Kansas City Chiefs is a sports franchise that desires to make money.

BY MR. SHAW:

Q. Okay. Could those Chiefs flags be considered advertisements for the Chiefs?

MS. JOKERST: Object to form.

A. Not in my opinion, no.

BY MR. SHAW:

Q. So even though it is a commercial business displaying its logo, that is not an advertisement?

MS. JOKERST: Object to form.

A. I would consider an individual owner who has a Chiefs flag to be displaying a non-commercial flag.

BY MR. SHAW:

Q. Okay. Okay. Can we return to -- well, actually, let's stay here. Would the Chiefs flag be announcing the Kansas City Chiefs?

A. It could be interpreted as announcing the Kansas City Chiefs.

Q. Okay. Would the Chiefs flag be -- strike that. Can you please go back to the definition of sign. There we are. Do you see in subsection 3 where it states that the sign must be located inside -- or excuse me, is not located inside a building?

A. That is one of the elements in the determination.

Q. So are there any signs that are located inside a building?

MS. JOKERST: Object to form.

A. The Tony's Pizza Events Center has a sign located inside its lobby.

BY MR. SHAW:

Q. Okay. Is that a regulated sign?

A. No.

Q. Okay. Because it is inside. Is that --

A. Because it's inside the building.

Q. I see. If a sign is inside a building but clearly visible from the outside, would that

Q. Okay. Could a artwork viewable from the street direct attention?

MS. JOKERST: Object to form.

A. It might attract attention.

BY MR. SHAW:

Q. What is the difference between attracting and directing attention?

A. Attracting attention might briefly pull your eyes off the road or off the sidewalk to see what it is. Directing attention is for something that someone wants you to read or look at for an extended period.

Q. Are you familiar with the Mural at the Mill?

A. I am.

Q. Does that mural direct attention?

A. No.

Q. What does it do?

A. It attracts your attention.

Q. I see. Because the artist only intended someone to look at it briefly.

MS. JOKERST: Object to form.

BY MR. SHAW:

Q. Is that what you're saying?

MS. JOKERST: Same objection.

required a sign permit for.

Q. Okay. And is that because it's an advertisement?

A. It is announcing, directing attention to and advertising the Army Recruitment Center.

Q. So it's doing all three?

A. Yes.

Q. Okay. What about a church or other house of worship? They put up a display saying services Sunday at 10 a.m. Is that a sign?

A. Yes.

MS. JOKERST: Object to form.

BY MR. SHAW:

Q. Is that because it is announcing?

A. It is announcing to the public that they are worship -- place of worship and letting the public know when they meet.

Q. Okay. What if that same church displayed a message that said turn to Jesus. Would that be a sign?

MS. JOKERST: Object to form.

A. Yes.

BY MR. SHAW:

Q. Okay. Why is that?

A. Well, you just described it as a -- they

would put up a structure, whether it was a banner or whether it's permanent sign, that would be something that is announcing, directing attention or advertising.

Q. What would they be advertising?

MS. JOKERST: Object to form.

A. They would be advertising their desire for the public to turn to Jesus.

BY MR. SHAW:

Q. Okay. In subsection 3 where it says is not located inside of a building, what is considered a building under this section?

A. A structure that meets the definition of building in the zoning ordinance.

Q. Okay. Would you please turn to the section defining building?

A. Appears to be 42-637.

Q. All right. And does that define a building as any covered structure built for the support, shelter or enclosure of persons, animals, chattels or movable property of any kind and which is permanently affixed to the land?

A. That is the definition that's in the zoning ordinance.

Q. All right. What is the support, shelter

Q. Why is that?

A. Because the definition says a wall sign is a sign, and a mural is not a sign.

Q. What is a mural?

MS. JOKERST: Object to form.

A. City of Salina does not have a definition for the term mural.

BY MR. SHAW:

Q. Then how do you know it is not a sign?

MS. JOKERST: Object to form.

A. A mural would not announce, direct attention to or advertise.

BY MR. SHAW:

Q. Is a mural calculated to attract the attention of the public?

MS. JOKERST: Object to form and foundation.

A. I think the word calculated goes to intent, and it's not my job to interpret somebody's intent.

BY MR. SHAW:

Q. Is that not how the code uses the word calculated, though?

MS. JOKERST: Object to form.

BY MR. SHAW:

language.

BY MR. SHAW:

Q. What is the purpose then of having a section to cover things that aren't covered in the previous sections if you can't make the determination of what those things are?

MS. JOKERST: Object to form.

A. I interpret it as a catch-all phrase.

BY MR. SHAW:

Q. But is there anyway that you can determine what would fall within that catch-all?

MS. JOKERST: Object to form.

A. There's probably different forms of expression that the code writers didn't or couldn't anticipate at the time it was written, so it was to catch all those.

BY MR. SHAW:

Q. But does this catch-all require you to make a determination about intent?

MS. JOKERST: Object to form.

A. No.

BY MR. SHAW:

Q. How do you know if it's calculated to attract the attention?

MS. JOKERST: Object to form.

A. I don't look at that.
BY MR. SHAW:
Q. If you don't look at that, why is that word in here?
A. You'll have to ask the person who drafted the definition.
THE REPORTER: Amanda, what was your objection?
MS. JOKERST: To form.
THE REPORTER: Thank you.
BY MR. SHAW:
Q. I'm asking you because it is your job as zoning administrator to provide the city's definitive interpretations of this code.
A. Then you give me a concrete example, and I'll make an interpretation.
Q. I'm trying to understand what this section could ever apply to.
A. It applies to signs.
Q. I think this is defining signs. Is that not correct?
MS. JOKERST: Object to form.
A. It is designed to inform the public and the people administering the code what the governing body wants to be regulated as a sign.

foundation.

A. According to the rules of construction of our city code, or and and are interchangeable, so I can't make that determination.

BY MR. SHAW:

Q. Do you no where in the city code that is placed?

A. In the rules of construction.

Q. I see. So and and or are interchangeable?

A. They can be, yes.

Q. They can be or they are?

A. Code says they can be.

Q. How then is someone to know if it means and or or?

MS. JOKERST: Object to form and foundation.

A. You have to look at the context in which its used.

MS. JOKERST:

BY MR. SHAW:

Q. All right. In subsection 2 there, for instance, do you see the and after the semicolon?

A. Yes.

Q. Does that mean and or or?

MR. SHAW: Required here.
THE REPORTER: And then your objection?
MS. JOKERST: Object to form.
THE REPORTER: Thank you. Sorry. Go ahead.
A. They used a series of commas followed by an or.
BY MR. SHAW:
Q. Well, I understand that. But the code says and and or can be interchangeable. So how do you know that it means or and not and?
MS. JOKERST: Object to form.
A. I didn't say that I know with certainty. I said that is the way I interpret the way it is drafted.
BY MR. SHAW:
Q. Okay. Is there anyway a member of the public could know whether this means and or or without first getting your determination?
MS. JOKERST: Object to form and foundation.
A. They could read it for themselves, and then they could contact the city to see how the city has historically interpreted it.
BY MR. SHAW:

to look like and get a determination from you about whether it qualifies as a painted wall sign or a mural?

MS. JOKERST: Object to form.

A. It is very commonplace for people who want to erect something or have a pictorial representation or some graphic to come into our office and say this is what I'm looking to do. Does this fit within your code.

BY MR. SHAW:

Q. All right. And how would you help that person determine if it was a mural or a painted wall sign?

A. By looking at whether it announces, directs attention to or advertises.

Q. So you would need to see a rendition or plan of what it is they plan to paint?

A. Yes.

Q. Okay. And depending on the content of that rendition, you would make the determination if it is a mural or a wall sign?

MS. JOKERST: Object to form.

A. I would look at it.

BY MR. SHAW:

Q. You would look at the content to

is so as to not regulate it?

MS. JOKERST: Object to form.

A. I don't understand the question.

BY MR. SHAW:

Q. All right. You said that the city does not regulate the content. But if you don't know what the content means, how do you ensure you are not regulating content?

MS. JOKERST: Object to form.

A. I would look at the graphic representation of what that individual owner wanted to display on their wall and I would determine, one, whether it announces, directs attention to or advertises. And then the second thing we would do is we would look at the extent of the wall that it covers and determine if that area is allowed within the sign code in the district that they're located.

BY MR. SHAW:

Q. So let's say a business paints or comes to you with a rendition wanting to paint on its wall, and it would cover the entire wall, a -- just text saying, you know, buy our product. How would you determine if that is a sign or a mural?

MS. JOKERST: Object to form.

A. I would look at the rendering that they provided. And if it was words or numbers, I would determine whether those words or numbers announce, direct attention to or advertise the business or the products at that premises, and we would attempt to draw a rectangular box around those letters and calculate the square footage of the display to determine whether it was too large or not too large to be located as proposed.

BY MR. SHAW:

Q. And let's say that same business came to you with a proposal to paint on the side of their building the Arrowhead logo of the Kansas City Chiefs and text, you know, let's go Chiefs. How would you determine if that were a sign or not?

MS. JOKERST: Object to form.

A. I would determine whether those graphics announced or directed attention to or advertised.

BY MR. SHAW:

Q. How would you do that?

A. Well, in the specific context you gave me, I would interpret that to say that it is announcing that that property owner supports the Kansas City Chiefs.

Q. What if that property was a training

facility for the Kansas City Chiefs?

A. Then it would be the same thing except it's also advertising and directing attention.

Q. Okay. Now, let's say the text on this mural, the letters are very widely spaced. Would you draw a rectangle around the entire display or only around each letter to determine its area?

MS. JOKERST: Object to form.

A. The entire display.

BY MR. SHAW:

Q. Okay. Would you also draw that rectangle around any other emblems that are related to that mural?

MS. JOKERST: Object to form.

BY MR. SHAW:

Q. So in the example I gave before, you've got the Chiefs Arrowhead and then the let's go Chiefs. Would you draw one rectangle or two separate rectangles?

MS. JOKERST: Object to form.

A. Are we talking about painted wall signs or are we talking about murals?

BY MR. SHAW:

Q. Well, either way. How would you determine the size?

MS. JOKERST: Object to form.

A. I wouldn't determine the size on a mural because we don't regulate murals. But I would determine that if I determined it to be a painted wall sign.

BY MR. SHAW:

Q. All right. If you have determined it to be a painted wall sign, how would you determine the size of that mural?

A. I would determine the size of the painted wall sign by following the instruction in Section 42-503 (a), and we would construct a rectangular box around the display.

Q. But would you consider that to be one display that includes both the Chiefs Arrowhead and the text let's go Chiefs, or do you consider it two displays one of the Arrowhead and one of the wording of let's go Chiefs?

A. I would consider it to be an integral display.

Q. Okay. So include both. Is that what that would mean?

A. I would include both --

MS. JOKERST: Object to form.

A. -- of those in the calculation.

listed the home team, the visitor's team, the time and score.

BY MR. SHAW:

Q. Is a billboard something more than a structure with changeable copy?

MS. JOKERST: Object to form and foundation.

A. A billboard is synonymous with the term off-premises or advertising sign. And if Kansas Wesleyan University sells advertising space to area business that are not located on the premises and that sign is oriented towards Cloud Street and not the stadium, then that side of the structure is not a scoreboard. It is a off-premise sign.

BY MR. SHAW:

Q. What does the orientation have to do with the sign?

A. The presumption in exempting a scoreboard is that a scoreboard --

MS. JOKERST: Can I -- did my objection get on there?

THE REPORTER: No. Can you give it to me, please.

MS. JOKERST: Object to form.

A. Can you repeat the question?

MR. SHAW: Can you read that back, please?

THE REPORTER: "What does the orientation have to do with the sign?"

MS. JOKERST: I said object to form.

A. The adopted exemption for scoreboards is based partially on the fact that the information they convey is directed to people that are in the stadium. And the determination for taking that scoreboard structure and saying that it's an off-premise sign is because the advertising is not oriented towards or directed towards the people within the stadium.

BY MR. SHAW:

Q. If the advertising copy were placed on the side of that scoreboard facing the audience, would that be a scoreboard or an advertising sign?

MS. JOKERST: Object to form.

A. It would be a scoreboard.

BY MR. SHAW:

Q. Even with the advertising copy?

MS. JOKERST: Object to form.

A. Yes.

BY MR. SHAW:

Q. Okay. So it is the orientation of the

of time.

BY MR. SHAW:

Q. Okay. Does this section apply to non-commercial signs as well?

MS. JOKERST: Object to form.

A. It appears to refer to signs that advertise a bona fide business.

BY MR. SHAW:

Q. Okay. So let's say, for instance, someone put up a, you know, Mitt Romney 2012 sign, and it's still up here in 2024. Is that sign considered abandoned?

MS. JOKERST: Object to form.

A. It would be considered an election sign that was up seven days after the election.

BY MR. SHAW:

Q. So you're not allowed to have any election signs seven days after an election?

A. Correct.

MS. JOKERST: Object to form.

BY MR. SHAW:

Q. If I were a -- not me. If any property owner were a big Dwight Eisenhower fan and they just wanted to put up a paint on the side of their wall, you know, I like Ike, would that be

allowed?

MS. JOKERST: Object to form.

A. Yes.

BY MR. SHAW:

Q. Is I like Ike a campaign slogan from the Eisenhower campaign?

MS. JOKERST: Object to form and foundation.

A. I don't know.

BY MR. SHAW:

Q. Okay. Why would the I like Ike sign be allowed but not the Mitt Romney 2012 sign not -- let me rephrase that. Why is an I like Ike sign not considered a political sign seven days after an election?

MS. JOKERST: Object to form.

A. Well, for one, Mr. Eisenhower is deceased, so he couldn't be running for any elective office. And it is simply an expression of whoever the sign holder is that they like Ike.

Q. But why can't the Mitt Romney fan continue expressing their admiration for Mitt Romney?

MS. JOKERST: Object to form and foundation.

A. If he wants to strike all portions from the sign that deal with voting for Mr. Romney or have an election date in it, then he can all the signs he wants that shows that he loves Mitt Romney.

BY MR. SHAW:

Q. Okay. So if the Eisenhower fan painted vote Eisenhower 1952, would that be considered a political sign that can't be up more than 7 days?

MS. JOKERST: Object to form and foundation.

A. I would not consider that an election sign.

BY MR. SHAW:

Q. Why wouldn't you consider it an election sign?

A. Common sense tells me it's not an election sign. It's not left over from some election.

Q. What if the sign had been painted in 1952 and it was just still around?

MS. JOKERST: Object to form.

A. I would consider it a historic sign.

BY MR. SHAW:

Q. I see and what is a historic sign?

smell but its neighbor did have a smell?

MS. JOKERST: Object to form.

A. Because the sign is still inviting customers to come in and partake of their product and notwithstanding the smell of the chicken farm.

BY MR. SHAW:

Q. If The Cozy Inn was not a restaurant or -- let's do a different one. Let's say The Cozy Inn only did delivery and so customers would never come to the Cozy Inn location, would the phrase Don't Fear the Smell still be a sign?

MS. JOKERST: Object to form.

A. That would require me to speculate.

BY MR. SHAW:

Q. I'm asking you to state how you would interpret this code in that scenario?

A. I think you're asking me to speculate without the full context.

Q. The full context is that this is a building that delivers food to customers but customers never come to that building, and it has a mural saying Don't Fear the Smell. Would that be interpreted as a sign under the code?

MS. JOKERST: Object to form.

A. I'd have to see what's on the rest of the

wall of the building.

BY MR. SHAW:

Q. It's a white wall except for those words?

MS. JOKERST: Object to form.

BY MR. SHAW:

Q. Would it be a sign in that situation?

A. My first --

MS. JOKERST: Object to form.

A. My first inclination would be to consider that a sign.

BY MR. SHAW:

Q. Why is that?

A. Because there's nothing else on the wall of the building.

Q. Why does the presence of other things on the wall of the building change the determination one way or another?

MS. JOKERST: Object to form.

A. Well, it's not -- it's not a non-commercial message.

BY MR. SHAW:

Q. If it's referencing the smell of its neighbor, would that be a non-commercial message?

MS. JOKERST: Object to form.

A. Not necessarily.

BY MR. SHAW:

Q. What message would that be?

A. The Don't Fear the Smell message could still be an invitation to partake of their food.

Q. Even if no one would ever come to this building?

A. Even if no one would ever come there, because their food -- they're telling the public their food is not affected by the smell of the chicken farm.

Q. I see. If the mural depicted pizzas, would that be considered a sign for the Cozy Inn?

MS. JOKERST: Object to form.

A. What else is on the wall?

BY MR. SHAW:

Q. It is the white wall of The Cozy Inn, and there's just a big pizza mural on it?

MS. JOKERST: Object to form.

A. Well, I think the first thing I would do is to determine whether it is off-premise advertising for some other establishment in the downtown area.

BY MR. SHAW:

Q. How would you determine that?

A. By looking at the pizza and seeing if it

made reference to any of the existing establishments in Salina or the downtown area.

Q. And if it's just a pepperoni pizza with no sort of logo or wordage on it, is that a sign or a mural under the code?

MS. JOKERST: Object to form.

A. I don't have to determine whether it's a mural. I only have to determine whether it's a regulated wall sign.

BY MR. SHAW:

Q. Okay. Would you determine that that is a regulated wall sign?

MS. JOKERST: Object to form.

A. Again, you're asking me to speculate. But if it was in the context of a blank white wall with a pizza symbol on it that had no association with announcing or directing attention to or advertising The Cozy Inn business and did not advertise another nearby establishment, then it would not be a regulated wall sign.

BY MR. SHAW:

Q. If that exact same painting were painted on the wall across town at a pizza joint, would that then be a sign?

MS. JOKERST: Object to form.

Q. I'm sorry. That was not what I intended to convey. What I'm asking is if that picture of a pizza, just a pepperoni pizza and nothing else was painted on the side of a pizza shop, would you determine that to be a sign?

A. Yes.

MS. JOKERST: Object to form. Let me get my objection in.

BY MR. SHAW:

Q. Why would you determine that as a sign?

A. Because it announces, directs attention to and advertises to the public that that is an establishment that offers pizza to its customers.

Q. What if a picture of a cup of coffee and a steaming coffee pot were painted on the side of The Cozy Inn with no words. Would you determine that to be a sign?

MS. JOKERST: Object to form.

A. I would have to know whether The Cozy Inn served coffee to its customers.

BY MR. SHAW:

Q. If it did not serve coffee to its customers, would you determine that to be a sign?

MS. JOKERST: Object to form.

A. If it did not announce, direct attention

to or advertise a product or service that was available inside The Cozy Inn establishment, then just by itself, a steaming coffee pot or steaming cup of coffee would not be associated with that business.

BY MR. SHAW:

Q. If The Cozy Inn did sell coffee, though, would that change your calculus?

A. Yes.

MS. JOKERST: Object to form. Did you answer, Dean? I didn't hear.

A. I did answer yes to that question.

BY MR. SHAW:

Q. If The Cozy Inn painted a mural of flying saucers attacking the building, would you determine that to be a sign?

MS. JOKERST: Object to form.

A. I couldn't answer that question unless I saw a rendering of what they were -- what that looked like.

BY MR. SHAW:

Q. Let's say it looked like a traditional science fiction movie of flying saucers with little green men attacking the building. Would you consider that to be a sign?

MS. JOKERST: Object to form.
A. I'd have to see a rendering of what it looked like to make that determination.
BY MR. SHAW:
Q. All right. What if there were just an airplane painted on the side of The Cozy Inn?
MS. JOKERST: Object to form to the extent there's a question pending.
BY MR. SHAW:
Q. Would that be a sign in your understanding?
MS. JOKERST: Object to form.
A. There's no airline service or travel agency or anything associated inside that building, I wouldn't see the association between that graphic representation and The Cozy Inn business.
BY MR. SHAW:
Q. Okay. What if there were a mural of baseball field with people playing baseball on the side of The Cozy Inn. Would you determine that to be a sign?
MS. JOKERST: Object to form.
A. I would give the same answer as I would to the coffee pot and the airplane.

BY MR. SHAW:

Q. Is that a no?

A. I would not consider it to be a sign.

Q. Okay. And with the airplane hypothetical, did you also say you would not determine that to be a sign. I think I may have missed that?

MS. JOKERST: Object to form.

A. I said if an airplane was painted on the north wall of The Cozy Inn building, it's not a travel agency, there's no product or service associated with airline travel within, I would not consider that to be something that announces, directs attention to or advertises The Cozy Inn.

BY MR. SHAW:

Q. If there were a mural of a -- with a landscape of a pasture with cows grazing and mustard plants, tomatoes and onions growing in the field, would that be considered a sign for the Cozy Inn?

MS. JOKERST: Object to form.

A. I'd have to see a rendering.

MS. JOKERST: Hey, Mr. Shaw?

MR. SHAW: Yes.

MS. JOKERST: I'm assuming -- well, I

guess I don't know. How much longer and would now be a good time to take a short lunch break?

MR. SHAW: Give me maybe five minutes. I'm almost done with this line of questioning. Then we can take a short break -- or we could take a lunch break, not just a short break.

BY MR. SHAW:

Q. Are you familiar with the artist Andy Warhol?

A. I think I know who he is.

Q. Can you turn to Exhibit 38. It should be almost the last exhibit. It should be the second to the last page in the binder?

A. Oh, the very last.

Q. That's it right there.

A. Right there. Okay.

Q. So what's marked there as Exhibit 38, have you ever seen that painting before?

A. I have not.

Q. Okay. If that painting were painted on the side of The Cozy Inn, would that be considered a sign?

MS. JOKERST: Object to form.

A. I would give the same answer I did with the airplane. That does refer to a specific

product. It borderline could be considered an off-premise sign directing people to a product that is available in other locations in Salina. But just standing by itself, it does not announce or direct attention to or advertise The Cozy Inn.

BY MR. SHAW:

Q. If The Cozy Inn sold tomato soup, would that change your calculus?

MS. JOKERST: Object to form.

A. It would.

BY MR. SHAW:

Q. Okay. Would that make you determine that this is a sign?

MS. JOKERST: Object to form.

A. I would determine that it advertises a product that they are making available to their customers inside.

MR. SHAW: Okay. All right. We can break for lunch now.

(THEREUPON, a recess was taken.)

BY MR. SHAW:

Q. Mr. Andrew, before we took our lunch break, I believe you had said that you had attended a meeting on Monday, November 6th of 2023 when you were first informed about the painting on

Q. Okay. So is it the official position of the City of Salina that Section 2-207 does not require a Certificate of Compatibility for painting anything other than a front facade?

MS. JOKERST: Object to form.

A. That has been the determination and interpretation.

BY MR. SHAW:

Q. If Mr. Howard had called up the Boom! festival and said, hey, I would love a Boom! mural to be painted on the side of my wall, would that have required a Certificate of Compatibility?

MS. JOKERST: Object to form and foundation.

A. It depends on what the end result was.

BY MR. SHAW:

Q. Let's say it was just a mural similar to the Mural at the Mill, children playing Ring Around the Rosie?

MS. JOKERST: Object to form.

A. If it were identical to the mural that's on the south wall of the building at the corner of Ash and Santa Fe, which was a Boom! festival mural and you picked that mural up and moved it to the north wall of The Cozy Inn, we would treat that

exactly the same as we treated the mural that's on the south wall of that building.

BY MR. SHAW:

Q. Is that to say you would not require a Certificate of Compatibility in that scenario?

A. We would not.

Q. Okay. Do you know someone by the name of Travis Young?

A. I do.

Q. Who is Travis Young?

A. He works for Salina Vortex, and he is one of the organizers, original instigators of the Boom! festival.

Q. So was he at that meeting you referenced earlier to discuss the Boom! festival?

A. I was at one meeting when the Boom! festival was first getting started. He was present along with Eric Montoy.

Q. Okay. Have you had any other conversations with Mr. Young?

A. I had one e-mail correspondence with him related to downtown. I correspond with him regularly in the course of the business that he owns which is Salina Vortex.

Q. So you correspond with him about that

artificial rectangles around it. We treated the entire north wall as part of the display area.

BY MR. SHAW:

Q. Okay. After Mr. Howard submitted this application on November 13th or whenever he submitted it, what was done with this application by your department?

A. It was placed on file and on hold.

Q. What does it mean for it to be on hold?

A. It means that we could not approve it, but we were going to try to continue to work with Mr. Howard to find a code-compliant code-based solution that might allow ultimately the sign to be installed.

Q. Does the city code discuss procedures for placing a sign permit on hold?

MS. JOKERST: Object to form.

A. It does not.

BY MR. SHAW:

Q. So is placing a sign permit on hold just a unwritten practice?

MS. JOKERST: Object to form.

A. It's not an unwritten practice. It's usually done in consultation with the applicant.

BY MR. SHAW:

BY MR. SHAW:

Q. And at any point after he submitted his application, did Mr. Howard consent to it being placed on hold?

MS. JOKERST: Object to form.

A. No. Because he already knew we couldn't approve it.

BY MR. SHAW:

Q. Okay. But is that consent?

MS. JOKERST: Object to form.

A. You tell me the difference between non-approval and denial and I'll answer your question.

BY MR. SHAW:

Q. Well, a denial under the code triggers certain appeal rights. Is that correct?

MS. JOKERST: Object to form.

A. What would he appeal?

BY MR. SHAW:

Q. He could appeal to the Board of Zoning Appeals. Is that correct?

MS. JOKERST: Object to form.

A. He could appeal to the Board of Zoning Appeals at any time.

BY MR. SHAW:

Q. So your position is that he may appeal at

due to the unique nature of the existing signs at The Cozy Inn, our office will be placing your Certificate of Compatibility application and your sign permit application on hold until our review of the sign regulations is complete. Is that sentence past tense or future tense?

MS. JOKERST: Object to form.

A. I'm not sure I follow the question.

BY MR. SHAW:

Q. Do you see where it says our office will be placing your Certificate of Compatibility application and sign permit application on hold?

A. If I was writing it, it would say has been placed.

Q. I see. Do you know why it was not written in that manner?

MS. JOKERST: Object to form.

A. I do not have firsthand knowledge of that.

BY MR. SHAW:

Q. When was the application placed on hold?

A. When it was received.

Q. So would that be November 13th, 2023?

A. That would be the date it was received if that was in fact the date it was received.

BY MR. SHAW:

Q. Who wrote this letter?

A. Dustin Michelson.

Q. Did you instruct Mr. Michelson to write this letter?

A. Miss Driscoll and I -- Miss Driscoll instructed it, and I was asked to work with Dustin to get it out.

Q. So did you review this before it was sent out?

A. I did.

Q. Is there a reason you did not change the wording so that it stated that it had been placed on hold?

A. No, other than I probably didn't pay attention to that portion as much as I could have. I was mostly focused on the wording of the third paragraph.

Q. The third paragraph saying as a part of the city's review of the sign regulations, are you referring to that paragraph?

A. Yes.

Q. Okay. Why was Mr. Michelson instructed to write this letter?

A. One, he was just starting to get involved

department is involved with, including The Cozy Inn.

Q. So just so I've got this straight, it's your position that The Cozy Inn's application was placed on hold on November 6th, 2023. Is that correct?

MS. JOKERST: Object to form.

A. Yes. And we told Mr. Howard that we were going to work to try to come up with a code compliant solution that might ultimately end up with his permit being issued for his display and that that was going to take some amendments to our current sign code. And so we were trying to convey the message that we were going to continue to work with him as well as others in the community who had sign issues of their own.

BY MR. SHAW:

Q. Does this letter make any reference to a determination made on November 6th?

A. It does not.

MS. JOKERST: Object to form.

BY MR. SHAW:

Q. Were you instructed to send this letter by Miss Driscoll?

MS. JOKERST: Object to form.

question pending.

BY MR. SHAW:

Q. What is the difference between her asking and her instructing you?

MS. JOKERST: Object to form.

A. Her mode of operation, her mode of dealing with her subordinate staff. Her mode of operation is to ask. And as my direct supervisor and head of the department, ask, instruct, direct, they're all the same.

BY MR. SHAW:

Q. Okay. So I was imagining emphasis --

A. Ask is not a courtesy.

Q. Okay. Could you please turn to Exhibit 13, -- I'm sorry, Exhibit 12.

A. Okay.

Q. Do you recognize this document?

A. That is a planning -- or that is a Downtown Design Review Board then known as the Lee District agenda that was sent out for that meeting by Mr. Burger who's no longer with us.

Q. Okay. And I think you just answered might have next question. Is the Lee District the same thing as the Downtown Salina Design Review District?

installations?

MS. JOKERST: Object to form.

A. City code does not have a definition for a mural.

BY MR. SHAW:

Q. Well, I understand that. Does it have a definition for art installation?

A. It does not.

Q. Okay. If a business came to you and said we would like to paint a mural, do we need a Certificate of Compatibility, what would you tell them?

MS. JOKERST: Object to form.

A. I'd tell them I would like to see a rendering of what they would like to do so I could determine whether it's a regulated sign or not.

BY MR. SHAW:

Q. And if you determined that it is not a regulated sign, what would you do then?

A. If it was not on the front facade of the building, I would tell them that no regulatory approvals are required.

Q. Is the mural at Salina Arts Center on the front facade of that building?

A. It is.

sign or a historical sign.

Q. Is it an abandoned sign?

MS. JOKERST: Object to form -- no, I'm not going to object to that.

A. It is not an abandoned sign.

BY MR. SHAW:

Q. What is it not an abandoned sign?

A. Because it's a preexisting sign that was exposed when a building was demolished in 1986.

Q. Earlier when we were discussing abandonment and non-conforming signs, you had stated that the only non-conforming sign that wasn't subject to abandonment was the theater marquee signs. Do you remember that?

MS. JOKERST: Object to form.

A. I don't recall it exactly that way. I recall reviewing that code section.

BY MR. SHAW:

Q. So why is this sign not subject to abandonment under 42-510?

A. Because it was originally an internal sign on the wall of a enclosed building that it was exposed to daylight in 1986 when the building that occupied that site was torn down turning the interior wall into an exterior wall.

BY MR. SHAW:

Q. Do you see the mural next to this Bull Durham mural?

A. Not really.

Q. Based on what you can see, has that been maintained?

MS. JOKERST: Object to form.

A. I can't speak to it because I don't know what it is.

BY MR. SHAW:

Q. Do you know who owns this building?

A. I do know who owns that building. It's the home of Land Title Services.

Q. Who runs Land Title Services?

A. I believe the owner of Land Title Services is Mike Hoppock.

Q. Does Mr. Hoppock have any role in the City of Salina?

A. Mr. Hoppock is currently an elected city commissioner.

Q. Okay. Please turn the page to Exhibit 16. Are you familiar with this letter?

A. I am familiar with this letter.

Q. Do you see in the paragraph where it says because the Treasure Chest facility discontinued

A. It was.

Q. Is that Schlotzsky's located inside of a large shopping center?

A. It's an outlot that's located in the Mid State Plaza addition.

Q. Do you know how the frontage for that building was calculated?

A. I do.

Q. How was it calculated?

A. It was calculated based off their 9th Street frontage and the mall ring road on the south.

Q. I see. So it wasn't just the street frontage. It was the parking lot of the large shopping center which had a path for cars to drive. That was considered street frontage?

A. No, that --

MS. JOKERST: Object to form.

A. That was considered to be a private street that provided access to Schlotzsky's.

BY MR. SHAW:

Q. Even though there's parking in between Schlotzsky's and that private road?

A. Yes.

Q. Okay. Go quickly to Exhibit 39, please.

Q. Would you please go to Exhibit 34. So that first page there of Exhibit 34, are you familiar with that mural?

A. I am.

Q. When did you first learn about that mural?

A. When I saw it.

Q. When was that?

A. Don't recall, maybe 2022, maybe when I was there doing an inspection. Don't recall.

Q. Okay. And is that mural outside?

A. I consider that mural and we have considered that mural to be inside the practice facility.

Q. On the third page of that exhibit, Bates No. 301, is that another angle depicting that mural?

A. Yes.

Q. And is that mural covered by anything in the facility?

A. No. But it is enclosed, and that wall forms the north wall of the practice facility.

Q. When was that determination made?

A. Probably when we determined that it was there.

front of The Yard, is that 4th Street?

A. That is 4th Street.

Q. Is that a public street?

A. It is a public street. It's a public right-of-way.

Q. Okay. And is the mural visible from 4th Street?

MS. JOKERST: Object to form.

A. I think from this angle I can see a corner of it.

BY MR. SHAW:

Q. Okay.

A. The part that's -- I don't know if that fence has mesh in it or not, if that's what obscuring it, but I can see the very corner.

Q. Okay. On the previous page with the Bates No. 301, is that taken from the public sidewalks?

MS. JOKERST: Object to form.

A. It looks like it's taken from the public sidewalk.

BY MR. SHAW:

Q. Okay. And is the mural visible there?

A. It is.

Q. Okay. Is there anywhere in the Salina

City Code where it discusses the orientation of a sign?

A. It does not. I searched in vain for it and insisted that it did, but it does not.

Q. Okay. And apart from your attorneys, I don't want to know about anything you may have spoken to with them, did you speak to anyone else in preparation for today's deposition?

A. No.

MR. SHAW: Okay. I have no further questions for you.

MS. JOKERST: I'm going to have some follow-up, but I want to take like a 10-minute break to review my notes. It should be pretty quick.

MR. SHAW: All right. So back at 5:50?

MS. JOKERST: 4?

MR. SHAW: Yeah, sorry, 4:50.

MS. JOKERST: 3:51 my time, 4:51 your time, yes.

(THEREUPON, a recess was taken.)

CROSS-EXAMINATION

BY MS. JOKERST:

Q. Mr. Andrew, I'm going direct your attention to Exhibit No. 7. Can you pull that up?

that Steve Howard is lying in his application?

MS. JOKERST: Object to form and foundation.

A. I don't even know what that means.

BY MR. SHAW:

Q. Is it the position of the City of Salina that Steve Howard has altered the rendition he submitted to be different than what he originally planned?

MS. JOKERST: Object to form.

A. I have no firsthand knowledge of that.

BY MR. SHAW:

Q. Okay. Do you have any reason to believe that the imagery he submitted with his application is not the imagery he intended to have painted on his wall?

MS. JOKERST: Object to form.

A. I don't know who prepared and submitted that.

BY MR. SHAW:

Q. Okay. But do you have any reason to believe that Mr. Howard did not intend to have that imagery placed on his wall?

A. There is no basis --

MS. JOKERST: Object to form.

A. -- to doubt what his ultimate intentions were.

BY MR. SHAW:

Q. Okay. Does your department have a tape measure?

A. It does.

Q. Is a tape measure an acceptable way to measure a wall?

A. Not a wall that's too tall to measure for the tape measure.

Q. Do you know how tall The Cozy Inn is?

A. It's been determined to be -- those walls are determined to be about 12 feet tall.

Q. How long is your tape measure that the department has?

A. Nine feet.

Q. Okay. Does the department never need to measure anything more than 9 feet?

A. We have other tools for measuring things that are tall. But Pictometry is an acceptable way to measure side wall heights, measure the heights of houses and other things.

Q. Okay. Regarding the Certificate of Compatibility for Eccentricity, do you know if Mr. or Mrs. Mattison filed that certificate?

CERTIFICATE

STATE OF KANSAS

COUNTY OF SHAWNEE

I, Sandra S. Biggs, a Certified Court Reporter, Commissioned as such by the Supreme Court of the State of Kansas, and authorized to take depositions and administer oaths within said State pursuant to K.S.A 60-228, certify that the foregoing was reported by stenographic means, which matter was held on the date, and the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of the same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and seal this 14th day of October, 2024.

SANDRA S. BIGGS STATE OF KANSAS CERTIFIED SHORTHAND REPORTER

Sandra S. Biggs

Sandra S. Biggs, C.C.R No. 0716

Exhibit Q
Andrew 30(b)(6) Deposition Excerpts

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

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COZY INN, INCORPORATED, d/b/a
THE COZY INN; STEPHEN HOWARD,
Plaintiffs,

.

vs. Civil Action No. 6:24-cv-01027-TC-ADM

.

CITY OF SALINA, KANSAS,
Defendant.

.

.

DEPOSITION OF

CORPORATE REPRESENTATIVE

DEAN ANDREW,

taken on behalf of the Plaintiffs, pursuant to Notice to Take Deposition, beginning at 2:10 p.m. on the 30th day of October, 2024, at Clark, Mize & Linville, 129 S. 8th Street, in the City of Salina, County of Saline, and State of Kansas, before Sandra S. Biggs, Kansas CCR No. 0716.

.

commercial location or can it be directing attention to a non-commercial location as well?

A. It can direct attention to any particular location.

Q. All right. And when the city determines if a display advertises, what methodology does the city use to make that determination?

A. We look to see whether the visual display promotes or encourages some sort of product or service or invitation to enter into some form of commercial transaction or whether the visual display promotes a particular brand or a particular product.

Q. Does the advertising have to be commercial in nature or can it be non-commercial?

A. It does not have to be commercial.

Q. When determining if a display is a sign, does the city determine if the display is calculated to attract the attention of the public?

A. No.

Q. Why doesn't the city determine that?

A. Because in interpreting and applying Section 42-764, the city has interpreted that to be a catchall provision and to catch any type of display mechanism that's not mentioned in the

application, an inventory of any existing signs that are already on the property.

Q. Will that maybe be called an elevation drawing, is that basically like a drawing of where the proposed sign would be on the property?

A. No.

Q. All right. What is the elevation drawing then?

A. Elevation drawing is an -- a drawing prepared usually by a sign manufacturer that says this is the proposed sign, here's the materials it's made out of, this is its height and width and here is the information on whether it's designed to be illuminated or static. And it's a draw that depicts the appearance and the physical characteristics of that sign.

Q. Would the elevation typically include the copy that will be placed on that sign if it is installed?

A. Yes.

Q. Okay. Is the copy required to be in the application?

A. It is if you want us to measure the letters.

Q. Is the city -- strike that. Does the

A. No.

Q. Why not?

A. Because it's a non-conforming sign. As a non-conforming sign, the owner of the sign can maintain that sign. They just can't enlarge it or structurally modify it or expand it.

Q. And has the city determined whether or not this sign is considered an abandoned sign?

A. It is not considered an abandoned sign.

Q. When did the city make that determination?

A. Well, if it made that determination, it predated the abandoned sign code which I believe was adopted in 1990.

Q. I'm confused by that. Before the code was adopted defining what an abandoned sign is, the city had determined it is not an abandoned sign?

MS. JOKERST: I'll object to form.

A. This sign was inside a building. This sign's over a hundred years old and was inside a building. That building was torn down in 1985. That interior wall became an exterior wall when the building was removed to make way for the parking lot. So at that point in time when it

BY MR. SHAW:

Q. So as long as a building is not vacant, a sign can't be abandoned?

MS. JOKERST: Object to form.

A. The abandoned sign ordinance establishes time frames for certain parts, portions of signs or sign support structures to be removed. And the triggering for that is the date upon which the premises became vacant. If the premises is not vacant, there's no date to trigger that on.

BY MR. SHAW:

Q. So even if the sign no longer advertises a bona fide business conducted, products sold or service provided, it isn't abandoned until the property has been vacated?

MS. JOKERST: Object to form.

A. The time period the clock for removal starts when the premises is vacant.

BY MR. SHAW:

Q. All right. We can move on to Exhibit 18. Are you familiar with Exhibit 18?

A. It appears to be a photograph of Fire Station No. 2 on South Santa Fe.

Q. Has the city made a determination about whether the mural at Fire Station No. 2 is

considered a sign?

A. Yes.

Q. What determination was made?

A. The determination that it does not constitute a sign that announces, directs attention to or advertises.

Q. What methodology did the city use to make that determination?

A. It used the methodology found in Section 42-764 to determine whether the visual display on the front of the building announced or directed attention to or advertised. It does not announce or proclaim any fact, event, occurrence or entity, it does not direct attention to any specific location or opening or doorway or any physical location, and it does not advertise.

Q. Does this mural depicted in the exhibit identify the building as a fire station?

A. The city's position is that it does not. It could just as easily appear on a museum or library or anywhere else.

Q. Does this mural pertain to the activities conducted at the fire station?

MS. JOKERST: Object to form.

A. Not this fire station.

Q. Where is that mural located?

A. It's on the south wall of the Schlotzsky's sandwich shop.

Q. And has the city determined that the mural depicted here is a sign?

A. Yes.

Q. When did the city make that determination?

MS. JOKERST: Object to scope.

A. I can't tell you the exact time. I can tell you it was determined when the city became aware of it and went out and reviewed it. It determined it to be a regulated sign and contacted the owner of the business and the owner of the property to say that they needed to obtain a sign permit for that sign.

BY MR. SHAW:

Q. What portions of this mural did the city consider to be triggering the sign code?

MS. JOKERST: I'll object to form.

A. The city determined it to be a single composition and determined that the entire visual display was a sign.

BY MR. SHAW:

Q. How did the city come to that

tower off of Magnolia Street?

MS. JOKERST: I'll object to form.

A. There is a sign that's painted on the water tower.

BY MR. SHAW:

Q. Okay. What does the sign on the water tower say?

A. To the best of my recollection, it says Salina and it has Visit Salina.org underneath it, but I would have to refer to the graphic I brought to the deposition with me.

Q. Okay. Referring to an image of it would refresh your recollection?

A. Yes.

Q. All right. Can you turn to Exhibit 39 then, please -- I'm sorry, not Exhibit 39. 34.

A. Is it stand-alone or is it associated with other things? Some of these have multiple pages. It used to have Salina lettered on it, but now, it just says Visit Salina.org, Right Place, Right Reason, Right Now.

Q. I'm sorry, it used to say what?

A. Used to say Salina.

Q. Okay. And so the city has determined that this is a sign. Is that what you testified

A. The City of Salina, city commission, believes that putting that information on the water tower protects the public health, safety and welfare. It also provides wayfinding by letting visitors know, one, that they're in Salina and, two, where they can find information about Salina.

BY MR. SHAW:

Q. What facts does the city have that show that the Chamber of Commerce website promotes the public health, safety or welfare?

MS. JOKERST: Object to form and scope.

A. Because attracting visitors and tourists to the city is their mission, and attracting visitors to the City of Salina protects the public health, safety and general welfare of the public.

BY MR. SHAW:

Q. Are traffic and wayfinding signs -- let me rephrase that. Can any sign that might be used by a driver as a landmark be considered an exempt sign under this section?

MS. JOKERST: Object to form and scope.

A. This exemption refers to signs that are placed or authorized by the city. This sign was both placed and authorized by the city by which I mean the governing body of the city.

Q. And so each line of the pentagon was individually calculated as a separate sign?

A. No.

MS. JOKERST: Object to scope.

A. You asked me how we calculated the area of it.

MS. JOKERST: Did we get my scope objection on the record here?

THE REPORTER: Yes.

MS. JOKERST: Okay.

A. All right. So I understood your question to be how the city calculated the size of that sign.

BY MR. SHAW:

Q. Yes, that was the question.

A. We drew a rectangle around The Yard and the bat, and we drew -- we measured the rectangle that forms the base of home plate, the rectangle that forms the left and right sides of home plate and the rectangles that form the point of the home plate, added those together and determined those to be what constituted the area of the sign. And the black -- entirely black backdrop of the paint wall was not considered to be part of the sign.

Q. Okay. So if I understand you correctly,

symbols.

BY MR. SHAW:

Q. So for The Yard wall sign we were discussing, shouldn't there have been a single rectangle that encompassed the entire home base plate and the text saying The Yard?

MS. JOKERST: Object to form and scope.

A. I do not believe so, no.

BY MR. SHAW:

Q. So is it the city's position that each individual element of a painted wall sign may have a independent rectangle drawn around it and then all of those rectangles are added up to calculate the wall sign?

MS. JOKERST: Object to form.

A. I'll let you calculate using your method and then I'll answer your question, because I don't understand what you're saying. Because what you're saying is exactly what we did.

BY MR. SHAW:

Q. Yes, that's what I'm asking. It's the city's position that whenever there's a wall sign --

A. Where it's practical.

Q. Okay. Where it's practical?

BY MR. SHAW:

Q. What methodology did you utilize to determine that it was not practical to use this method for The Cozy Inn?

MS. JOKERST: Object to scope and form.

A. A, it's a single composition and, B, there's no rectangles. It's not -- it all blends together.

BY MR. SHAW:

Q. Why could you not draw individual rectangles around each burger and each element of the mural that is painted on the wall of The Cozy Inn?

MS. JOKERST: Object to scope and form.

A. I don't think it's practical.

BY MR. SHAW:

Q. Okay. And is that based on anything in the code or is that your determination as zoning administrator?

MS. JOKERST: Object to form and scope.

A. That is my determination as a zoning administrator.

MS. JOKERST: Can we take a brief break to go off the record? I just want to get an official estimate on what we're doing for time

CERTIFICATE

STATE OF KANSAS

COUNTY OF SHAWNEE

I, Sandra S. Biggs, a Certified Court Reporter, Commissioned as such by the Supreme Court of the State of Kansas, and authorized to take depositions and administer oaths within said State pursuant to K.S.A 60-228, certify that the foregoing was reported by stenographic means, which matter was held on the date, and the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of the same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and seal this 13th day of November, 2024.

SANDRA S. BIGGS STATE OF KANSAS CERTIFIED SHORTHAND REPORTER

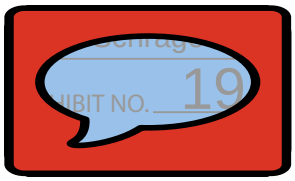
Sandra S. Biggs

Sandra S. Biggs, C.C.R No. 0716

Exhibit R
Schrage Email
11/8/23

Message

From: mike.schrage@salina.org [mike.schrage@salina.org]
Sent: 11/8/2023 3:54:03 PM
To: Bill.Longbine@salina.org; greglenkiewicz@gmail.com; mike@landtitlesalina.com; karlryan@ryanmortuary.com; twdavis22@gmail.com
CC: jacob.wood@salina.org; Shawn.Henessee@salina.org
Subject: Cozy Inn Wall Sign
Attachments: Cozy Inn Wall Sign.jpg



Mayor Hoppock & City Commissioners:

If you aren't already aware, Cozy Inn has recently begun painting a *wall sign* on the south side of their building (see attached photo). While it aesthetically might look similar to murals in the downtown and elsewhere, it contains a commercial message promoting a business and its product which makes it a wall sign subject to the applicable zoning codes which include size limitations among other things.

There is considerable litigation surrounding the topic of art, free speech, commercial speech and disparate treatment of one sign in comparison to another. I know I sound like a broken record, but this is shaping up to become a city-wide precedent without further refinement of our applicable sign codes. Pick whatever example you like, but Applebee's could choose to paint the entirety of all four sides of their building as walls signs citing this as the precedent without further refinement of our codes. Another example is that more prominent brick walls along Santa Fe, Iron, Walnut, etc. could be utilized for commercial advertising signs painted on brick or otherwise.

Maybe we as a community are okay with that, but our current code doesn't reflect that and that is a difficult policy question to be deliberated on.

You may recall that similar questions came up last year related to attempts to classify signs as murals and trying to leverage the various murals installed or proposed to be installed in the downtown. Our immediate solution was to coordinate closely with Boom Salina to confirm that none of their murals would intentionally or unintentionally include commercial speech subject to our sign codes.

Further addressing murals and the commercial speech question was already on Development Services' plan of work for 2024. Lauren Driscoll had already begun to identify consultants versed not only in the planning issues but the legal issues surrounding this topic.

With respect to Cozy Inn, we were not contacted in advance. Rather, we became aware as the painting was observed.

Staff has contacted them and asked them to pause. And, a meeting has been scheduled with them for Monday of next week.

The intended message is that we are willing to try to work with them to frame up the policy questions necessary for the community to decide whether they wish to permit wall signs such as theirs; trying to explain the significance and precedent setting nature of the question at hand; and explaining how their project is classified as a sign and not a mural. We fully anticipate likely responses of its already on social media and everyone loves it and what's the big deal reminiscent of the Toy Parade.

As much as we would like to resolve this quickly, that is just not a realistic expectation given the complexity of the topic, the outside assistance we are going to need and the policy review an adoption process that needs to take place.

In advance of the Monday meeting with staff, Mr. Howard has begun contacted City Commissioners and others. So, I am emailing to provide you with some background in advance. We will remain as customer service oriented as we can, but the crux of the issue is that they began painting a commercial wall sign without contacting us and we now find ourselves

playing catchup while trying to avoid being overly blunt saying it is prohibited by code and squarely placing blame with them.

In anticipation of the likely response that the Bull Durham sign on the Land Title building is commercial speech, it went through a DRB review and approval process based on its historical nature and it does not pertain to a product available for sale.

I would be happy to discuss this further if you have questions or are receiving additional feedback.

I will provide an update following Monday's meeting as well.

As is our standard advice to the Governing Body related to avoiding interactive communications, this message is intended to share information of general interest to the Governing Body. I have included all Commissioners on this email distribution list to be sure they have the same information. Please, do not initiate interactive communications amongst Commissioners since that would be a violation of the Kansas Open Meetings Act.

Mike Schrage
City Manager
City of Salina, Kansas
300 West Ash, Room 202
P.O. Box 736
Salina, KS 67402-0736

Phone: 785-309-5700
Fax: 785-309-5711
TDD: 785-309-5747
Website: www.salina-ks.gov


Don't Fear the Smell!
The Fun is inside!

Exhibit S
Schrage Talking Points

Message

From: mike.schrage@salina.org [mike.schrage@salina.org]
Sent: 11/9/2023 3:53:08 PM
To: mike@landtitlesalina.com
Subject: Cozy Inn Talking Points

Our intended message is

this question is not unique to Salina.

A distinction is commonly made between murals and art when compared to commercial speech.

We regulate the size of commercial signs through a permit process.

We were not contacted in advance and a permit was not applied for.

The proposed sign covers the majority of the wall of his building and far exceeds the size limits currently allowed by our code.

We are willing to work with Mr. Howard

this is going to be a code revision and policy decision that will take some time.

We have scheduled a meeting with Mr. Howard to start those conversations Monday of next week.

Mike Schrage
City Manager
City of Salina, Kansas
300 West Ash, Room 202
P.O. Box 736
Salina, KS 67402-0736

Phone: 785-309-5700
TDD: 785-309-5747
Website: www.salina-ks.gov

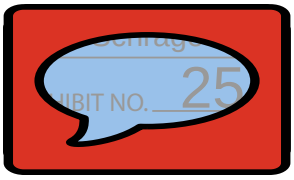


Exhibit T
Salina City Commission Meeting Minutes

CITY OF SALINA, KANSAS
REGULAR MEETING OF THE BOARD OF COMMISSIONERS
November 13, 2023
4:00 p.m.

Vice-Mayor Longbine asked the Clerk for verification that notice had been sent for today's City Commission meeting. The Clerk replied yes.

The Regular Meeting of the Board of Commissioners was called to order at 4:00 p.m. in Room 107, City-County Building. A roll call was taken followed by the Pledge of Allegiance and a moment of silence.

Those present and comprising a quorum: Vice-Mayor Bill Longbine (presiding), Trent W. Davis, M.D., Greg Lenkiewicz, and Karl Ryan.

Also present: Mike Schrage, City Manager; Jacob Wood, Deputy City Manager; Shawn Henessee, Assistant City Manager; Greg Bengtson, City Attorney; and Nikki Goding, City Clerk.

AWARDS AND PROCLAMATIONS

(3.1) Proclamation of the month of November, 2023, as National Home Care and Hospice Month. Debra Bengston, President of Accessible Home Care and Gentiva Hospice, joined by Lyndsey Webb and Nikki Welsh, read the proclamation and discussed related activities.

PUBLIC HEARINGS AND ITEMS SCHEDULED FOR A CERTAIN TIME

None.

CONSENT AGENDA

(5.1) Award the bid for updated park trash receptacles in the amount of $147,895.10 and authorize the City Manager to authorize the purchase upon the fulfillment of all prerequisites under the purchasing policy.

(5.2) Award a quote for five (5) gas utility vehicles using cooperative purchasing in the amount of $68,011.76 and authorize the City Manager to authorize the purchase upon fulfillment of all prerequisites under the purchasing policy.

(5.3) Approve the minutes of the meeting of November 6, 2023.

23-0337 Moved by Commissioner Ryan, seconded by Commissioner Davis, to approve the consent agenda as presented. Aye: (4). Nay: (0). Motion carried.

ADMINISTRATION

(6.1) Approve Ordinance No. 23-11181 on second reading approving the execution of Amendment No. 1 to the Loan Agreement between the Kansas Department of Health and Environment and the City of Salina for the purpose of financing improvements to the Wastewater Treatment Plant (KWPCRF Project No. C20 2049 01).

Vice-Mayor Longbine stated Ordinance No. 23-11181 was passed on first reading on November 6, 2023. Since that time, no comments have been received.

EXHIBIT NO. 33

I 23-0338 Moved by Commissioner Ryan, seconded by Commissioner Davis, to approve Ordinance No. 23-11181 on second reading. A roll call vote was taken. Aye: (4). Nay: (0). Motion carried.

(6.2) Approve Ordinance No. 23-11182 on second reading approving the execution of a Loan Agreement between the City of Salina and the State of Kansas for the purpose of financing drinking water service lines inventories to account for any lead service lines (Kansas Water Supply Loan Fund Project No. 3185).

Vice-Mayor Longbine stated Ordinance No. 23-11182 was passed on first reading on November 6, 2023. Since that time, no comments have been received.

23-0339 Moved by Commissioner Ryan, seconded by Commissioner Davis, to approve Ordinance No. 23-11182 on second reading. A roll call vote was taken. Aye: (4). Nay: (0). Motion carried.

(6.3) Authorize the City Manager to execute agreements with Fire Facilities, Inc. for the cost of materials in the amount of $35,836.00 and JTL Construction in an amount not to exceed $6,600.00 for labor associated with repairs to the City of Salina Fire Department Training Tower, for a total cost not to exceed $42,436.00.

Drew Sprague, Division Chief of Training for the Salina Fire Department, explained the request, fiscal impact, and action options.

I A short discussion on the variance of pricing between bids was had, relating to travel expenses for recommended out-of-state repair contractors.

23-0340 Moved by Commissioner Ryan, seconded by Commissioner Davis, to authorize the City Manager to execute agreements with Fire Facilities, Inc. for the cost of materials and with JTL Construction for labor associated with repairs to the Training Tower, and to authorize the City Manager to reallocate the 2023 sub-CIP funds in the amount of $42,000 planned initially for bailout harnesses to Training Tower repairs. Aye: (4). Nay: (0). Motion carried.

(6.4) Award the low bid for construction of the new Sanitation equipment storage building.

Jim Kowach, Public Works Operations Manager, explained the request, fiscal impact, and action options.

The ensuing discussion focused mainly on the pros and cons of bonding versus paying up front in cash for the building construction and how the City will recoup funds from paying cash.

Mike McCall with M Squared Architects advised starting construction sooner rather than later as metal prices are set to rise again very soon.

E 23-0341 Moved by Commissioner Davis, seconded by Commissioner Ryan, to approve the target sanitation fund balance be increased from $500,000.00 to $750,000.00 and approve the low base bid and add-alternate 1 bid for the new Sanitation building and authorize the City Manager to execute a contract in the amount of $812,242.00 with Ponton Construction, Inc. from Salina, Kansas, funding out of cash reserves in the Sanitation Fund. Aye: (4). Nay: (0). Motion carried.

(6.5) Approve Charter Ordinance No. 43 on first reading exempting the City of Salina from certain parts of Chapter 308 (Senate Bill 508) of the Session Laws of 1937, as amended by Chapter 250 (Senate Bill 341) of the Session Laws of 1939, an act authorizing certain cities of the first class to convey certain property to the Board of Education of such city.

Shawn Henessee, Assistant City Manager, explained the request, fiscal impact, and action options.

A brief discussion on anecdotal history of the property was had among the City Commissioners and staff.

Greg Bengtson, City Attorney, highlighted that the residences bordering the land in question to the south are not part of this action.

23-0342 Moved by Commissioner Ryan, seconded by Commissioner Davis, to approve Charter Ordinance No. 43 on first reading. A two-thirds vote was necessary to advance the motion. Aye: (4). Nay: (0). Motion carried.

DEVELOPMENT BUSINESS

None.

OTHER BUSINESS

Commissioner Longbine asked for updates on a proposed Safe Haven baby box at the Salina Fire Department, for which Fire Chief Tony Sneidar provided an update.

City Manager Mike Schrage brought forward discussion on a mural being painted on the side of Cozy's Inn. There had been misunderstandings surrounding the mural as its content falls under sign provisions in the City Code rather than art, and City staff met with the owner of Cozy's to discuss options. After background details were provided by Lauren Driscoll, Director of Community and Development Services, the City Commission felt it may be in the best interest of those involved to bring in outside consultants who are experts in sign codes and art as advertisement to find a way forward that's amenable to the public while still respecting Supreme Court rulings and code provisions.

CITIZENS FORUM

Norman Mannel, Salina, Kansas, shared his thoughts on governments regulating private businesses.

Ken Reitz, Salina, Kansas, gave his feelings on artists and murals around town.

Johnny Keller, Salina, Kansas, made a point that the murals around Salina serve to bring people into the City, effectively working much the same as the Cozy's mural aims to bring in customers to their business. He wondered if there was a way to evaluate situations such as this one on a case-by-case basis.

EXECUTIVE SESSION

ADJOURNMENT

I

23-0343

Moved by Commissioner Ryan, seconded by Commissioner Davis, that the regular meeting of the Board of City Commissioners be adjourned. Aye: (4). Nay: (0). Motion carried. The meeting adjourned at 5:44 p.m.

Michael L. Hoppock, Mayor

[SEAL]

ATTEST:

Nikki Goding, City Clerk

Exhibit U
Schrage Email
2/20/24

Message

From: mike.schrage@salina.org [mike.schrage@salina.org]
Sent: 2/20/2024 10:23:56 AM
To: travis@vortexglobal.com
Subject: Cozy Inn Sign Code Lawsuit

Travis:

I am playing catchup to a federal lawsuit recently filed on behalf of The Cozy Inn equating their sign to the murals painted throughout the downtown. Apparently, it has hit the news media. I am in orientation training with the City Commission all day today. It is too soon to say if or how it might impact the Boom! Salina, but that is something will have to review. I will reach out to you further once we have had a chance to conduct our legal review and collect our thoughts a bit more.

My intended response is to stress that we have been very mindful of the Reed v Gilbert case as well as applicable case law regarding what constitutes commercial speech subject to sign code regulation. I say all of that because we have felt confident of our policy and application this point, but it will now have to be litigated; I don't know how long that might take; and I don't know what that might mean about our code enforcement in the interim.

I will reach out just as soon as I know more and can discuss it further with you.

Mike Schrage
City Manager
City of Salina, Kansas
300 West Ash Street, Room 202
Salina, KS 67402
Phone: 785-309-5700
Website: www.salina-ks.gov

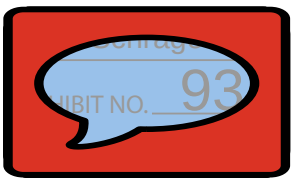


Exhibit V
Art Center DRB Packet

DESIGN REVIEW BOARD

Exhibit C

LEE DISTRICT SALINA DOWNTOWN INC.

DESIGN REVIEW BOARD
4:00 P.M., Thursday, April 23, 2015
City Conference Room 107
City-County Building, 300 West Ash Street

AGENDA

1. Administration:
   A. Call to Order/Roll Call.
   B. Additions or corrections to the agenda.
   C. Review of Minutes for March 26, 2015 meeting.
   D. Introduction of guests.

2. New Business:

2A. The Salina Art Center, 242 S. Santa Fe Avenue, has requested a meeting of the Design Review Board to review and receive public comments regarding a façade improvement project that has been planned for the Art Center's South Santa Fe Avenue façade. A ceramic tile mural has been commissioned for an area within a 12 ft. x 23 ft. building bay on the South Santa Fe façade. It will be located between the original Art Center entrance and the north education wing. The Art Center property is legally described as Lots 158 & 160 on Santa Fe Avenue in the Original Town of Salina, and is addressed as 242 S. Santa Fe.

3. Other Business:

4. The next regular meeting, if scheduled, will be on May 14, 2015.

5. A motion to adjourn is in order.



An applicant or his representative is required to attend the hearing in order for the Design Review Board to take action on an application.

City of Salina/Development Services Planning Division City-County Building 300 W. Ash Street, Room 201
Salina, KS 67402-0736 785/309-5720 FAX 785/309-5713 email: john.burger@salina.org

Design Review Board Members: Michael Trow – ***Chair***
Daniel Baffa, Larry Bunker, Maggie Gillam, Tina Lewis – Vice Chair

Salina Downtown Inc. 120 West Ash Street PO Box 1065 Salina, Kansas 67401 785-825-0535
Interim Executive Director: Penny Bettles Email: pbettles@salinadowntown.com

ADDRESSING THE DESIGN REVIEW BOARD

The public is invited to speak to the Design Review Board during the public hearing portion of any item under discussion.

Please raise your hand and after receiving recognition from the Chairman, approach the front, state your name, address, and purpose for speaking.

Generally, the order of presentation after introduction of an item by the Chairman will be:

1. Determination if the applicant or his/her representative is present.
2. Brief presentation by the staff.
3. Comments by the applicant.
4. Comments by interested citizens.
5. Additional comments by the applicant, and/or citizens as appropriate.
6. Closing of public comment portion of hearing by Chairman.
7. Design Review Board discussion and action.

Any person dissatisfied with a decision by the board to either grant or deny a certificate of compatibility may appeal the decision to the Board of City Commissioners by filing a written protest with the City Clerk on a form provided by that office. The notice of appeal must be filed within fourteen (14) calendar days after the conclusion of the public hearing. If you have any questions or concerns, please contact the Development Services Department in Room 201 of the City-County Building, 309-5720.

(7-16-14)

City of Salina

Application for a Certificate of Compatibility
Lee District - Design Review Board

Please return the completed application to:
Development Services Department
300 W. Ash, City-County Building, Room #201
Salina, KS 67402-0736
785-309-5720 FAX 785-309-5713
Email: john.burger@salina.org

The City Planning Department:

- *Provides technical assistance to the applicant*
- *Receives the completed application*
- *Provides a copy of the application to the SDI Office for input*
- *Schedules the Design Review Board hearing*
- *Presents the application to Design Review Board*

Please see the Schedule for Design Review Board hearings for the deadline for submissions. The applicant must attend the review hearing in order for the item to be considered at that meeting.

Applicant Please Complete the Following:

1. Property Address 242 S. Santa Fe Ave.
2. Name of Business Salina Art Center
3. Applicant's Name Salina Art Center (Bill North) 4. Applicant Ph. 827-1431
5. Applicant's Address same 6. Email bnorth@salinaartcenter.org

7. Property Owner Name (if different)
8. Property Owner Address 9. Owner Ph.
9. Contractor/Architect Conrad Snider 10. Phone 316-288-8694
11. Contractor/Architect Address 310 W. Fourth, Newton, KS 12. Email conrad@southwind.net

13. What kind of work is proposed? (please check all that apply)

☐ Renovation or repair ☐ Demolition ☐ Sign or Canopy ☐ New Construction ☐ Paint
☒ Other, please describe Ceramic tile mural

14. Approximate cost of project (including labor and material) $18,250

Please attach the following materials to the application:

1. Representative color photographs showing the existing structure and the location for the proposed work.
2. Small-scale projects must include a floor plan that shows the existing structure and location of the proposed work.
3. For larger or complex projects, provide architectural drawings such as site plan, floor plans, elevations, wall sections and/or detail drawings.
4. Material samples or product specifications indicating color, form, profile and texture.
   See also the attached *Guide to Completing a Certificate of Compatibility Application* for required submittal material for project types: new construction, renovation or repair, sign or canopy or demolition.

Briefly describe the nature of the proposed work, the condition of existing materials, the replacement/new materials and/or the method of rehabilitation (attach additional sheets if necessary):

See attached

Applicant Signature: Bill North Date 4/10/2015

Property Owner Signature (if different): _____ Date _____

For Staff Use: **Application** DIPS-1

Legal Description of Property LOTS 158 & 160 ON SANTA FE, ORIGINAL TOWN

Current Zoning C-4 Current Use ART GALLERY/EDUCATION
Date Filed 4-10-15 Accepted by J BURGER
Date of Publication NA Building/Sign Permit No. NA
Property Owner Notice Sent 4-15-15 Heritage Commission Review (y/n) NO
Date of Hearing 4-29-15 Approval Notification Sent

Attachment, Salina Art Center, Application for a Certificate of Compatibility, Lee District, Design Review Board

The proposed project is a ceramic tile mural along the Art Center's Santa Fe Avenue façade. The specific location is the 12 x 23 ft. bay between the Art Center's original Santa Fe entrance and the current entrance. Ceramic artist Conrad Snider will create and install the mural. A three-time SculptureTour Salina exhibitor, Snider maintains a studio in a renovated 1920s feed mill in Newton, Kansas. His commissioned work can be found throughout the state and includes his mural *Points of Contact* (First Presbyterian Church, Salina) and *Woven*, the large-scale figural group in front of the City of Salina Municipal Court Building.

The mural will be constructed of handmade ceramic tiles between one-half inch and two inches thick. The tiles will be fired to Cone 10 (2,300 degrees Fahrenheit), which will vitrify the clay, making it resistant to water penetration and damage from freeze/thaw cycles. The tiles will be attached to one-half inch thick concrete backer board with tile mortar. Grout lines will be filled with an epoxy grout.

The mural design will take into consideration the exterior of the building, including colors and surfaces of the brick, ceramic elements on the center pillar, and roof tiles. The space allowed for the tile mural is approximately 12 feet by 23 feet, for a total of 230 square feet (see attached photo).

STAFF REPORT
LEE DISTRICT DESIGN REVIEW BOARD

Hearing Date: **April 23, 2015**

ITEM

The Salina Art Center, 242 S. Santa Fe Avenue, has requested a meeting of the Design Review Board to review a proposed façade improvement/art installation project that has been planned for the Art Center's Santa Fe Avenue façade. A ceramic tile mural has been commissioned for an area within a 12 ft. x 23 ft. building bay on the Santa Fe façade. It will be located between the original Art Center entrance and the north education wing. The Art Center property is legally described as Lots 158 & 160 on Santa Fe Avenue in the Original Town of Salina, and is addressed as 242 S. Santa Fe.

BACKGROUND

Conrad Snider, a Newton, Kansas ceramic artist has been commissioned to create and install a mural comprised of handmade ceramic tiles that would be attached to the stucco wall in the Art Center façade. The art installation will become a permanent feature of the Art Center's Santa Fe façade. The mural will be comprised of sculptural elements existing on the exterior of the building, including the brick, terra cotta and the Spanish Tile roof. Mr. Snider's work is found throughout the state and includes the *Points of Contact* ceramic mural located in the Salina's First Presbyterian Church, and the *Woven* terra cotta figures in front of Salina's Municipal Court Building.

A Ceramic Workshop has been scheduled by the Salina Arts and Humanities Department under the Horizon Grants Program that will involve up to 12 participants of the community. Under the direction of the artist, Conrad Snider, participants will assist in the creation of a scale model of a ceramic tile mural for the exterior of the Art Center. The series of workshops at the Art Center Warehouse will engage participants in the development of the model's design and fabrication. The completed model will serve as the basis for Mr. Snider's permanent sculptural mural. The art installation would become an important feature of the Art Center's visual identity and downtown Salina's streetscape. The workshop is open to high school students and adults with no experience in ceramics required. A call for the Ceramics Workshop is attached to this report.

PHYSICAL CHARACTERISTICS

Records indicate that the one-story storefront building on Lot 160, addressed as 240-241 S. Santa Fe was originally constructed of brick with a Mission Revival cornice and Spanish Tile roof in 1929. A one-story storefront building addressed as 236-238 S. Santa Fe was constructed on Lot 158 in 1946. The Knights Sporting Goods Company and various storefronts occupied 238 and 240 S. Santa Fe until 1987. A building permit was issued in August 11, 1987 to convert the space at 240-242 S. Santa Fe to the Salina Art Center at a cost of $237,000. The space was opened to the public on January 11, 1988. Architect Donnie Marrs enclosed the storefront facing Santa Fe with two bays, having arched stone surrounds, a building base and terra cotta tile columns.

The Art Center expanded into the space at 236-238 S. Santa Fe in 1992, establishing an open floor plan education wing that included additional gallery and work space, restrooms and storage. Jones-Gillam Architects designed an all glass storefront with a sculptured metal canopy on the Santa Fe façade and a covered courtyard at the rear of the building.

An artist in residence warehouse was established in a commercial space at 149 S. 4th Street in 2008. The space is occupied by an open work area and an apartment for Artist-in-Residence exhibitors at the Salina Art Center. This space is utilized as a workshop and for various activities and projects of the Art Center throughout the year.

PROPOSAL

The proposed project would include the installation of a ceramic tile mural along the Art Center's Santa Fe façade. The work would be located in the northern one-half of the original Art Center building. The specific location is the 12 ft. by 23 ft. bay between the original Art Center entrance on the south and the education wing to the north. This area is delineated by the arched stone surround and the stone building base at the sidewalk.

Ceramic artist Conrad Snider will create and install the mural. Mr. Snider is a three-time Sculpture Tour Salina exhibitor and maintains a work studio in a renovated 1920's feed mill in Newton, Kansas. A summary description of Mr. Snider's work is maintained on his website, a copy of which is attached to this report.

The mural will be constructed of handmade ceramic tiles between one-half inch and two inches thick. The tiles will be formed and fired in a kiln to vitrify the clay and make it water resistant to water penetration and damage from freeze/thaw cycles. The tiles will be attached to one-half inch thick concrete backer board with tile mortar. Grout lines will be filled with epoxy grout to match the tile

The mural design will take into consideration work done at a Ceramic Workshop being sponsored by the Salina Arts and Humanities Horizon Program where a scaled prototype will be designed and constructed. The composition of the proposed mural will utilize the colors and surface textures of the brick, ceramic elements on the terra cotta pillars and Spanish Tiles found on the Art Center building south gallery wing and cornice. The space allowed for the tile mural is approximately 12 feet by 23 feet, totaling 230 sq. ft. This blank stucco area on the Art Center façade has been utilized in the past for temporary art installations.

STAFF ANALYSIS

Installation of public art does not require a Certificate of Compatibility however; a public hearing has been scheduled before the Lee District Design Review Board in order to receive comments on the compatibility of the art piece to submit as part of a grant application to the Façade Development Incentive Program (DIP) of Salina Downtown, Incorporated. The grant program is designed for large and small scale projects for new

construction, renovation of building facades and interiors of existing historic buildings. The program is designed primarily for façade improvements to the exteriors of buildings in the Lee District. The amount of any grant is contingent on the scale of the project and available funds. Non-profit Salina Downtown, Inc. partner businesses located in the Lee District boundary are eligible to apply for DIP funds.

The proposed project appears eligible for the DIP program as a façade renovation and restoration project. Work found to comply with the Salina Downtown Guidelines (contingent on Design Review Board approval) is an eligible use of funds.

> The Design Guidelines for Downtown Salina, 2008 contains the following Policies relating to Architectural Character:
>
> ***Building materials should be visually compatible with the predominate materials of the downtown area.***

The historical use of terra cotta and ceramic tile accents and trim is consistent throughout the Blocks of North and South Santa Fe. Evidence of this can be found at 117-119 S. Santa Fe and 111-125 East Iron Avenue, among others. It is integral to the Spanish Revival style of architecture used by Salina architects, such as Charles Shaver during the 1930's. Much of this is attributed to the influence of J. C. Nichols' development of the Country Club Plaza in Kansas City. The 200 Block of South Santa Fe West elevation contains several Spanish Revival style facades.

It appears that the mural design program will utilize the colors and surface textures of the brick, terra cotta and ceramic elements on the terra cotta pillars and Spanish Tiles found on the Art Center building south gallery wing and cornice. This would appear to be consistent with the Design Guidelines.

REQUESTED ACTION

Similar to the addition of a new storefront, awning or other permanent improvement or renovation of an existing architectural element, it is appropriate for owners and residents potentially affected by such an activity in the Lee District to receive notice and an opportunity to be heard on the matter.

A public hearing was been scheduled for the Design Review Board to receive public comments and input about the mural design and installation. As a general rule, an art installation does not fall within the scope of authority of the DRB, however in this case the DRB is being asked to make a recommendation on this proposed art project for use with an application being made under the Façade Development Incentive Program of SDI.

The art installation is intended to be a permanent element similar in function to a sign or logogram that will direct the public to the gallery and educational activities within the Art Center building. It is also intended to enrich and engage members of the public visiting

or doing business within the Downtown area. Letters of notice were sent to surrounding property owners announcing this public hearing. Since the Lee District Design Review Board customarily reviews exterior improvements in the Lee District, it is appropriate for this Board to receive comments from the public at the hearing concerning the art installation as a requirement of the Façade Development Incentive Program. A description of the DIP Program is attached to this report.

A record of the proceedings and any verbal or written comments received will be provided to the Façade Development Incentive Program (DIP) Review Committee for their use in analyzing a potential grant award for this project. Grant awards are made during May and September of each calendar year.


Facade Improvement
Salina Art Center
242 S. Santa Fe Avenue
SALINA ART CENTER
Request Area
Santa Fe Ave
Mulberry St
N
W
E
S

CALL FOR
CERAMIC WORKSHOP
SALINA ART CENTER MURAL

CERAMIC WORKSHOP PARTICIPANTS NEEDED

Modeling Community: Salina Art Center Façade Mural Project

Limited to 12 participants - **SIGN UP TODAY!**

Under the direction of acclaimed ceramic artist Conrad Snider, participants will assist in creating a scale model of a ceramic tile mural for the exterior of the Art Center's Santa Fe Avenue façade. A series of workshops at the Art Center's Warehouse will engage participants in the development of the model's design and fabrication. The completed model will serve as the basis for Snider's permanent sculptural mural, which will become an important feature of the Art Center's visual identity and downtown Salina's streetscape.

This project was funded in part by the Horizons Grants Program of the Salina Arts and Humanities Foundation. Funding is provided by Horizons, a private donor group.

Three-time SculptureTour Salina exhibitor Conrad Snider maintains a studio in a renovated 1920s feed mill in Newton, Kansas. His commissioned work can be found throughout the state and includes his mural *Points of Contact* (First Presbyterian Church, Salina) and *Woven*, the large-scale figural group in front of the City of Salina Municipal Court Building.

WHAT: Ceramic mural workshop with Conrad Snider.

WHO: The workshop is open to high school students and adults. No experience with ceramics necessary.

WHEN: Wednesday, **April 22, 4-6 p.m.**; Thursday, **April 23, 4-7 p.m.**; and 3 sessions before May 6 (dates and times TBD on April 22).

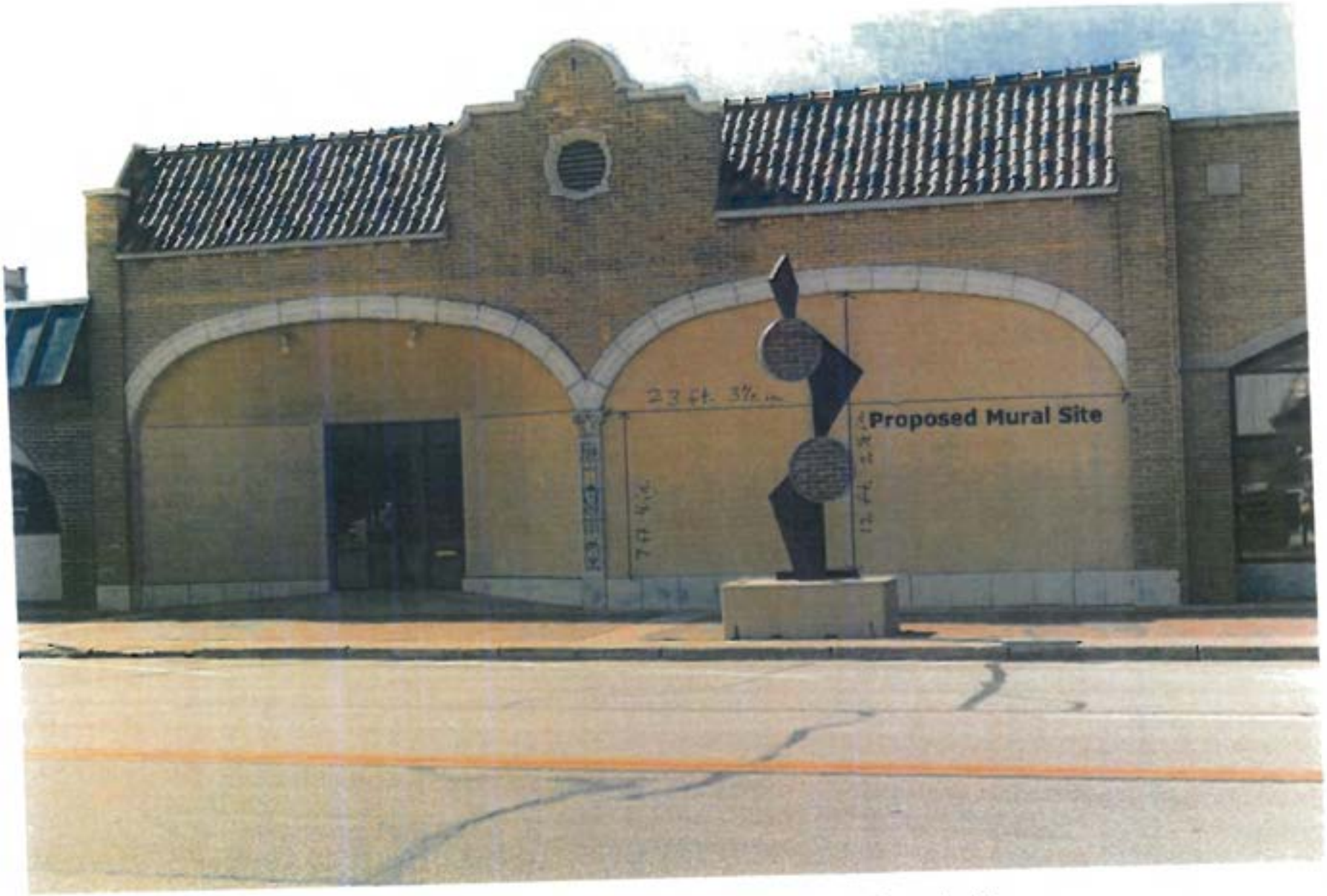
WHERE: The Salina Art Center Warehouse, 149 S. 4th St.

HOW: Register online (http://goo.gl/QjqeDn), by email (info@salinaartcenter.org), or by phone (827-1431). Participation in the workshop is FREE OF CHARGE. Registration is on a first-come, first-served basis and limited to 12 participants. There will be a waiting list.

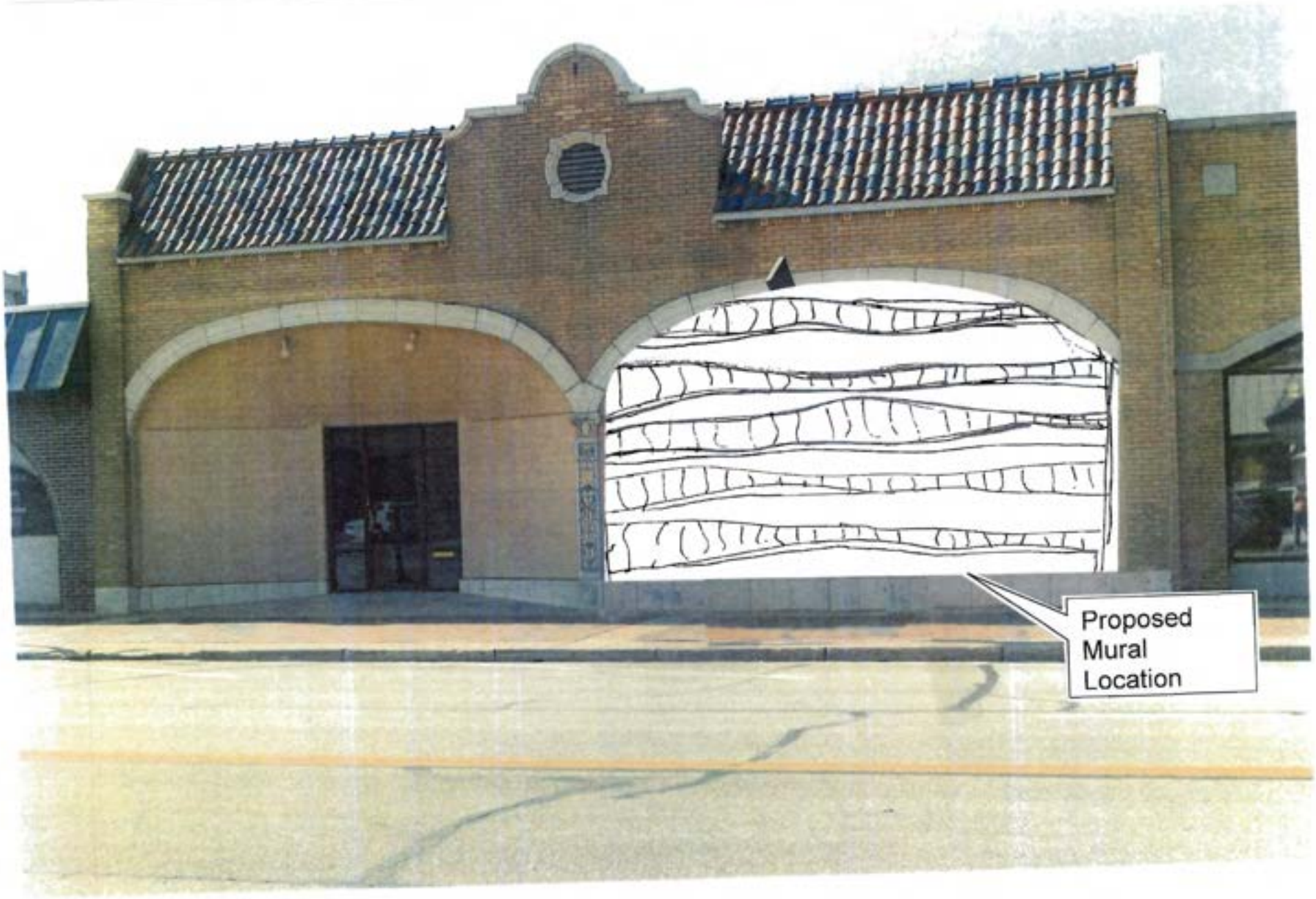
For more information, call 827-1431.

SALINA ARTS & HUMANITIES Horizons Grants Program

SALINA art center



Salina Art Center, 242 S. Santa Fe, proposed mural site



Salina Art Center, 242 S. Santa Fe, proposed mural site



Sample Mural Design

CONRAD SNIDER
STUDIO WEBSITE



Conrad Snider
Large Scale Ceramic Sculpture, Hand Made Tile Murals, and Wheel Thrown Vessels

Write to me here

Visit Soldner Equipment

Conrad Snider

Welcome to my website. Thank you for visiting and come back again, new photos are added periodically.

Here you will be able to visit my studio, see one-of-a-kind large scale ceramic sculptures and vessels, and see how the vessels are made.

Click on the images below to see other pieces. Scroll down to read about my work.


Figures


Tile Murals


Wheel Thrown Vessels


Public and Private Projects


Hand Built Vessels


Studio and Home

My work is all large scale and ranges from clay vessels, both thrown on the potter's wheel and hand built, to figurative pieces and hand-pounded tile murals. Each of these aspects is important to me and feeds a different part of my personality. When I work on a piece I try to let the clay speak, sharing its natural behaviors, sensuality, visual strength, and power. I want each piece to have its own individual presence.

The process from wet clay to a finished piece takes 6 months to a year, ending with the final glaze firing in a gas reduction kiln to 2300 degrees Fahrenheit. Some pieces will be fired multiple times to enhance the glazed surfaces and textures. The surfaces are equally important to the form for the overall effect of the piece. High fired clay is impervious to fingerprints, water, and paints, which allows tactile exploration to be as much a part of the viewers' experience as visual interpretation. These same attributes also make clay ideal for public art installations.

I make most of my pieces ahead and find homes for them later on. Most of my sales are to individuals, though I have done a number of public commissions, and have pieces in several Public and Corporate collections. Because each piece is personal to me, and they spend so much time in the studio, they become like my children. I want them to go to good homes where they will be appreciated for years to come.

Read more Resume

This page is currently being modified. Some links are not yet completed. Please bear with us and come back soon.

Tile Murals

These tile wall murals are ideal for architectural accents and can be custom commissioned. Most of the tiles are made to fit on a one foot grid, including grout lines. These tiles are hand-pounded individually and fired to Cone 10, 2300 degrees Fahrenheit.

Back to Home





72" X 96"



72" X 96" X 5"



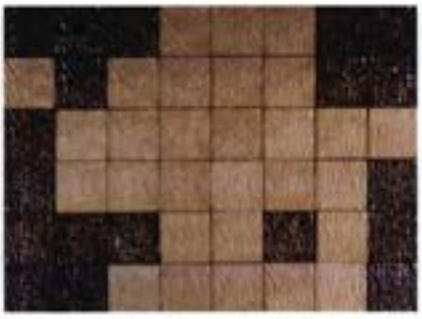
98" X 147"



72" X 96"



72" X 120"



72" x 96"

SALINA DOWNTOWN, INC.
DEVELOPMENT INCENTIVE PROGRAM

Salina Downtown, Inc.
DEVELOPMENT INCENTIVE PROGRAMS

Forgivable Loan Program for Major Projects

This grant program is designed for *large* scale projects for new construction, and for renovation of façades and interiors of existing historic buildings (see definition below) within the Lee District. Salina Downtown, Inc. recognizes that property owners and tenants may need assistance making costly improvements and enhancements to the exterior of their buildings and to the interior of historic buildings. This program is designed primarily for façade improvements and new construction. However, interior improvements to historical or locally historically significant buildings (50 years or older) may qualify. The amount of any grant is contingent on the scale of the project and available funds through the Development Incentive Program.

ELIGIBILITY: Property owners and/or tenants who are in good standing with the Lee District (service fees are current) are eligible to apply. However, non-profit Salina Downtown, Inc. partner businesses located within the Lee District boundary are also eligible to apply for DIP funds.

AVAILABLE FUNDS: $35,000 annually 2008-2010. Maximum single project award $15,000.

MATCHING REQUIREMENT: All applications are competitive and require a minimum cash only match of 1.5:1 private to Development Incentive Program (DIP) grant funds. In-kind contributions will NOT count towards the required match. This is a reimbursement program. Upon completion of the project the applicant is required to pay the full amount of the project up front and submit proof of paid bills before reimbursement will be made. (See Reimbursement Policy)

ELIGIBLE USE OF FUNDS: Projects may include but are not limited to:

- New building construction
- Building expansion
- Vacant building redevelopment
- Facade renovation and restoration (emphasis on removal of metal siding and metal awnings) and/or replacement with new coverings or roll-ups
- Work complying with Salina Downtown Design Guidelines, contingent on Design Review Board approval
- Pressure cleaning
- Stucco: new or restoration
- Painting
- Window, Door or transom replacements or repairs.
- Re-pointing of mortar joints for brick or stone
- Awnings (including the removal/installation of old awnings and canopies)
- Alley entry way improvements
- Entry way tile in exterior doorways
- Interior code related work.
- Interior work to historical buildings or buildings deemed to be historically significant (50 years or older) and work preserves historical interior aspects of the building

INELIGIBLE USE OF FUNDS:

- Signage
- Projects with no minimum 1.5:1 match
- Projects outside the Lee District boundaries
- Any in-kind expenses including labor of property/business owners
- Roofing
- HVAC

Salina Downtown, Inc.
DEVELOPMENT INCENTIVE PROGRAMS

Forgivable Loan Program for Major Projects (continued)

SELECTION CRITERIA: All projects will be judged on their individual merits and components. The following criteria will serve as the basis of consideration:

- Ratio of matching funds minimum 1.5 private to 1 DIP. Additional consideration given to applicants providing more than the minimum match requirements.
- Projects creating new businesses and/or additional employment in downtown will receive additional consideration or priority.
- Project's adherence to Salina Downtown Design Guidelines
- Improvements to façade given priority
- Interior work may be included at the discretion of the review committee if the building is Historic or deemed historically significant (at least 50 years old) and the interior work preserves historic characteristics.

APPROVAL:

Applications are subject to review and approval by the DIP Review Committee with final approval of the Salina Downtown, Inc. Board of Directors. The DIP Grant Review Committee includes two members of the SDI Business Support and Recruitment Committee, one SDI Board member, one Design Review Board member and one member appointed by the Salina City Commission. Applications awarded DIP funding will officially be notified by letter.

ADDITIONAL REQUIREMENTS:

- Provide an architectural drawing or sketch
- Provide a five minute oral presentation to the application review committee.
- All projects awarded grants must be completed within one calendar year from the award letter date.
- Two professional contractor estimates of the cost of the intended improvements are required.
- Application must include a professional architectural design including color and material choices.
- All work must meet all City Building code requirements.
- All applicants are responsible for acquiring and completing all necessary city permits.
- Taxes and Lee District Fees must be current.
- Written approval of building owner, specifying work, must be included in application (if applicable).
- A contract must be signed between Salina Downtown, Inc. and applicant within three months of approval from SDI Board and prior to work commencing.
- The SDI office will be notified in advance of commencement of all work on the project
- Representatives of SDI will be allowed on the work site at all reasonable times.
- Environmental assessment must be completed
- Work must be completed within one year of signed Grant Reimbursement contract.

APPLICATION DEADLINE: Application forms are available from Salina Downtown, Inc. (SDI), PO Box 1065, 205 West Ash Street, Salina, Kansas 67401 and on line at www.salinadowntown.com. Completed applications are due at the SDI office by 12:00 noon the third Wednesday of April and August. Awards will be made twice annually in May and September. Applications awarded DIP funding will officially be notified by letter.

Salina Downtown, Inc.
DEVELOPMENT INCENTIVE PROGRAMS

Forgivable Loan Program for Major Projects (continued)

REIMBURSEMENT POLICY

Successful applicants receive disbursement of DIP funds after completion of project, approval of work by a final City inspection, receipt of Certificate of Completion, and submittal of copies of paid invoices for approved expenses to the SDI Executive Director. To receive reimbursement, the property owner must sign an agreement to maintain the funded building improvements for a period of at least 3 years for a DIP Forgivable Loan Program for Major Projects ($3,500 and above). This agreement shall provide for a lien against the property in an amount equal to the reimbursement amount.

REPAYMENT/GRANT FORGIVENESS POLICY

For reimbursement totaling $3,500 and above, one third (33.3%) of said lien for improvements shall be forgiven annually on the anniversary date of the Certificate of Completion. Should the property be sold or refinanced prior to the full forgiveness of the lien, the remaining amount of the lien shall be paid to SDI upon sale, or closing of the refinancing Grant. The agreement shall be filed with Saline County Register of Deeds and transferred upon sale of the property.

Exhibit W
Sign Permit Submittal Procedures

City of Salina

DEVELOPMENT SERVICES DEPARTMENT
City-County Building ● 300 West Ash Street - Room 205 ● P.O. Box 736
Salina, Kansas 67402-0736
TELEPHONE (785) 309-5715 OR 309-5720 ● FAX (785) 309-5713
TDD (785) 309-5747 ● E-MAIL building.services@salina.org

SIGN PERMIT SUBMITTAL PROCEDURE

All Sign Permit Applications Shall Include:

1. **Site Plan of Zoning Lot*** - Use a scale of at least one inch to 50' or less and show the location of all structures, existing signs on premises and proposed sign(s). Also show the location of all property lines, streets, driveways and parking areas. Set-back measurements to property lines of signs and buildings are to be shown.

2. **Shop Drawings** – Submit drawings of proposed sign(s) drawn in detail showing the height, dimensions, proposed copy and structural type of sign. If sign is double faced, indicate the distance between sign faces. Also, indicate if sign will be lighted internally, externally or have flashing, pulsating or moving lights or lights which create the illusion of movement.

3. **Inventory of Existing Signs** – Provide the information requested (number, square footage, type and height etc.**) on the attached "Inventory of Existing Signs" form.

4. **Completed Application Form***** - Failure to provide all requested information will in most cases cause a delay in the review of the sign permit application.

***Zoning Lots** - A parcel of land that is designated by its owner or developer, at the time of applying for a zoning certificate as a tract all of which is to be used, developed or built upon as a unit under single ownership. Typically Shopping Centers and Malls are considered one zoning lot. The total building frontage determines the total allowable sign square footage.

****Gross Sign Surface Area** – The gross surface area of a sign shall be the sum of all surface areas of all the sign faces, except that for signs designed as double faced signs, with both faces parallel and the distance between the faces does not exceed two (2) feet, then only one face of the sign shall be considered in determining the gross surface area. When two (2) or more signs are located on a zoning lot, the gross surface area of all signs on the lot shall not exceed the maximum allowable for the district regulations. For computing the area of any wall sign which consists of letters, numbers and symbols mounted or painted on a wall, the area shall be deemed to be the area of the smallest rectangular figure which can encompass all of the letters, numbers or symbols.

*****Sign Contractor Licensing Requirement** – No person shall engage in the business of sign hanging, installation, erection, maintenance or repair of signs within the corporate limits of the city without complying with the provisions of the Salina Code which requires that all sign contractors be licensed.

"Our Mission is to encourage and promote safe, quality Development and construction in the City of Salina"

Classification of Signs by Function and Structural Type

The following signs are classified by function:

1. ***Advertising Sign*** – A sign, which directs attention to a business, commodity, service or entertainment conducted, sold, or offered at a location other than the premises on which the sign is located or to which it is affixed (off-premise sign).

2. ***Bulletin Board Sign*** – A sign that indicates the name of an institution or organization on whose premises it is located and which contains the name of the institution or organization, the name or names of persons connected with it, and announcements of persons, events of activities appearing or occurring at the institution. Such signs may also present a greeting or similar message.

3. ***Business Sign*** – A sign which directs attention to a business or profession conducted, or to a commodity or service sold, offered or manufactured, or an entertainment offered, on the premises where the sign is located or to which it is affixed.

4. ***Construction Sign*** – A temporary sign indicating the names of architects, engineers, landscape architects, contractors, and similar artisans involved in the design and construction of a structure or project only during the construction period and only on the premises on which the construction is taking place.

5. ***Identification Sign*** – A sign having the name and address of a building, business, development or establishment. Such signs may be wholly or partly devoted to a readily recognized symbol.

6. ***Nameplate Sign*** – A sign giving the name and/or address of the owner or occupant of a building or premises on which it is located, and where applicable, a professional status.

7. ***Real Estate Sign*** – A sign pertaining to a sale or lease of the lot or tract of land on which the sign is located, or to the sale or lease of one or more structures, or a portion thereof located thereon.

The following signs are classified by structural type:

1. ***Awning, Canopy and Marquee Si***gn – A sign that is mounted or painted on, or attached to an awning, canopy or marquee. No such sign shall project more than twenty-four (24) inches above, below, or twelve (12) inches beyond the physical dimensions of the awning, canopy or marquee, and a minimum of eight (8) feet of clearance shall be provided above grade.

2. ***Decorative Sign*** - A sign or display fabricated of canvas, cloth, fabric, plastic, plywood, or other light, impermanent material and designed or intended to be displayed in connection with an event for a short time period.

3. ***Ground Sign*** – Any sign placed upon, or supported by, the ground independently of the principal building or structure on the property. Signs on accessory structures shall be considered ground signs.

4. ***Mobile Sign*** – A sign that is not permanently affixed to the ground or a building and is designed or constructed to be easily moved from one location to another, including signs mounted upon or designed to be mounted on a trailer, even if the sign has had its wheels removed.

5. ***Pole Sign*** – A sign that is mounted on a freestanding pole, the bottom edge of which sign is six (6) feet or more above ground level (10' if it is in the vision triangle).

6. ***Projecting Sign*** – A sign that is wholly or partly dependent upon a building for support and which projects more than twelve (12) inches from such building.

7. ***Roof Sign*** – A sign erected, constructed and maintained wholly upon or projecting above any portion of the roof of a building or having the roof as the principal means of support. A mansard shall be considered part of the wall of the building.

8. ***Wall Sign*** – A sign fastened to or painted on a wall of a building or structure in such a manner that the wall becomes merely the supporting structure or forms the background surface, and which does not project more than twelve (12) inches from such building.

"Our Mission is to encourage and promote safe, quality Development and construction in the City of Salina"

Exhibit X Defendant's Response to First Set of Interrogatories

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Cozy Inn, Incorporated, d/b/a The Cozy Inn; Stephen Howard,	)	
Plaintiffs,	)	**CIVIL ACTION**
	)	**CASE NO. 6:24-cv-01027-TC-ADM**
v.	)	
City of Salina, Kansas,	)	
Defendant.	)	

DEFENDANT'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Defendant City of Salina, Kansas ("the City"), by and through its attorneys Fairfield and Woods, P. C., hereby submits the following Responses to Plaintiff's First Set of Interrogatories:

GENERAL OBJECTIONS

1. Defendant objects to Plaintiffs' terms and definitions to the extent they attempt to impose obligations beyond the scope of the Federal Rules of Civil Procedure.

2. Pursuant to the stipulation set forth in the Scheduling Order (Dkt. 29) at p. 6, Defendant objects to the production of any privilege log requiring Defendant to log documents or communications created on or after February 19, 2024 that are subject to the attorney-client, work product, and anticipation of litigation privileges.

3. Defendant objects to each discovery request to the extent it seeks the disclosure of documents or information protected from discovery by the attorney-client privilege, attorney work product doctrine, or any other applicable privilege or immunity. Any inadvertent disclosure

of any privileged communication or documents shall not constitute a waiver of the applicable privilege, and Defendant reserves the right to seek return of all copies of any privileged communication.

4. Defendant objects to each discovery request to the extent that it seeks to require Defendant to disclose public documents that are equally available to all parties.

5. Defendant objects to each discovery request to the extent it is vague, ambiguous, overly broad, unduly burdensome and oppressive, irrelevant to the claim or defense of any party, or otherwise not proportional to the needs of the case. F.R.C.P. 26(b)(1).

6. Defendant objects to each discovery request to the extent it contains multiple, discrete subparts. *See* F.R.C.P. 33(a)(1).

7. Defendant's responses are based on a reasonable and diligent search for information and are made to the best of its present knowledge, information, and belief. Because discovery in this matter is ongoing, Defendant reserves its right, consistent with Federal Rule of Civil Procedure 26(e), to supplement its Responses with additional or different information that further investigation or discovery may reveal.

8. Defendant objects to each request to the extent it requires Defendant to provide a narrative account of its case or inquire beyond material facts supporting specific factual matters raised in the pleadings. *See*, *e.g.*, *Hilt v. SFC, Inc.*, 170 F.R.D. 182, 186–87 (D. Kan. 1997) and *Hiskett v. Wal-Mart Stores, Inc.*, 180 F.R.D. 403, 404 (D. Kan. 1998).

9. Defendant objects to the extent the burden of deriving the answer from business records is substantially the same for Plaintiffs as it is for Defendant. *See* F.R.C.P. 33(d); *see also*

Linnebur v. United Telephone Ass'n, Inc., 2011 WL 3490022, *5 n.46 (D. Kan. Aug. 10, 2011).

10. The foregoing General Objections apply to and are incorporated into each and every specific Response below, whether or not expressly incorporated by reference. The repetition or omission of any General Objection in the Responses below should not be construed to mean that other applicable General Objections are not being asserted.

FIRST SET OF INTERROGATORIES

1. Please explain how the City first learned about the Plaintiffs' mural's existence.

OBJECTION AND RESPONSE: The City objects to this discovery request to the extent it refers to the Cozy sign that is the subject of this dispute ("Cozy Sign") as a mural or otherwise implies the Cozy sign is not a sign under the Salina Code of Ordinances ("Salina Code"), Chapter 42, Articles X ("Sign Code"). Subject to and without waiving this objection, the Cozy is located on a main street approximately one block from the City's offices. Due to the size and location of the sign, it is visible to passersby from the street. Brad Anderson noticed the Cozy Sign as he drove by the Cozy, and was the first City staff member to bring the sign to the City's attention.

2. Please identify the city officials who discussed with Dustin Herrs the enforcement of the mural-sign code regime against the Plaintiffs' mural and describe the extent of each official's involvement (i.e. whether the official directed Mr. Herrs to issue a citation against Plaintiffs).

OBJECTION AND RESPONSE: The City objects to this discovery request to the extent it refers to the Cozy Sign as a mural or otherwise implies the Cozy Sign is not a sign under the Sign Code. The City further objects to the use of the phrase "mural-sign code regime" to refer to the Sign Code or to Salina Code, Chapter 2, Article X ("BID Code"). The City objects to this request as compound and seeks information regarding the "extent of each officials' involvement" that is not a discrete subpart of the initial interrogatory asking the City to identify the city officials who discussed the "enforcement of the" Sign Code against Plaintiffs' sign.

Subject to and without waiving these objections, the City responds to the first interrogatory contained in this request, that is "Please identify the city officials who discussed with Dustin Herrs the enforcement of the mural-sign code regime against the Plaintiffs' mural" as follows: The City did not issue a notice of violation or citation to Plaintiffs regarding the Cozy Sign. The City determined the Cozy Sign was a sign under the Sign Code and therefore subject to the Sign Code and BID Code, evaluated the Cozy Sign under the Sign

Code and determined that the Cozy Sign was too big to qualify for a sign permit, and informed Mr. Howard of the same. The City staff members who discussed the evaluation of the Cozy Sign under the Sign Code with Dustin Herrs were Lauren Driscoll, Dean Andrew, and Mike Schrage.

Regarding the second interrogatory in this request, as to Ms. Driscoll's involvement with Mr. Herrs, while it is impossible to remember every detail of Ms. Driscoll's involvement with Mr. Herrs and more details may come to light as discovery in this matter is ongoing, in general Ms. Driscoll discussed the application of the Sign Code, the size limits of the Sign Code in relation to the size of the Cozy Sign and Cozy property, follow-up and meeting with Mr. Howard and Mr. Benson, providing information to Mr. Howard regarding the applicability of the Sign Code to the Cozy sign, next steps regarding the Cozy Sign and sign permit application, and the agreement with Mr. Howard to pause the work on the Cozy Sign.

Regarding the third interrogatory in this request, as to Mr. Andrew's involvement with Mr. Herrs, while it is impossible to remember every detail of Mr. Andrew's involvement with Mr. Herrs and more details may come to light as discovery in this matter is ongoing, in general Mr. Andrew discussed the application of the Sign Code, the size limits of the Sign Code in relation to the size of the Cozy Sign and Cozy property, Mr. Howard's knowledge of the Sign Code and BID Code process, and next steps regarding the Cozy Sign.

Regarding the fourth interrogatory in this request, as to Mr. Schrage's involvement with Mr. Herrs, while it is impossible to remember every detail of Mr. Schrage's involvement with Mr. Herrs and more details may come to light as discovery in this matter is ongoing, in general Mr. Schrage participated in discussions with Mr. Herrs, Mr. Andrew and Ms. Driscoll regarding the application of the Sign Code to the Cozy Sign, meeting with Mr. Howard and Mr. Benson, and next steps regarding the Cozy Sign.

3. Please explain the changes the City believes Plaintiffs need to make to their mural in order to "turn this into a mural rather than a sign," as suggested by Vice Mayor Longbine at the November 13, 2023, Commission meeting, (Doc. 16 at ¶ 136.) and in the Brief in Support of Defendant's Motion to Dismiss (Doc. 27 at 8).

OBJECTION AND RESPONSE: The City objects to this request to the extent it refers to the Cozy Sign as a mural or otherwise implies the Cozy Sign is not a sign under the Sign Code. The City objects to this request to the extent it seeks information protected by the attorney-client or work product privileges as it relates to the Brief in Support of Defendant's Motion to Dismiss. The City further objects to this request as it seeks the City to explain or interpret the arguments made by the City's counsel in Doc. 27 to Plaintiffs. The City also objects to this request to the extent it misinterprets the argument in Doc. 27 at 8 as a suggestion. The City also objects as the request uses only an excerpt of Vice Mayor Longbine's statement and misinterprets the statement made by Vice Mayor

Longbine on November 13, 2023 as a suggestion. Mr. Longbine's full statement at the meeting was "So I guess my thoughts all along as I've studied this issue is what would it take for him to turn this into a mural rather than a sign." The statement was phrased as a question, not a suggestion. That is because Mayor Longbine does not interpret or apply the Sign Code or BID Code on behalf of the City. The City will not respond to the request to the extent it seeks information "as suggested" by Vice Mayor Longbine or in the Brief in Support of Defendant's Motion to Dismiss.

Subject to and without waiving these objections, the City responds only to the non-objectionable portion of the request that asks "Please explain the changes the City believes Plaintiffs need to make to their mural in order to 'turn this into a mural rather than a sign.'" The City regulates signs as defined by Salina Code § 42-764. In order to remove the Cozy Sign from the applicability of the Sign Code regulations, Plaintiffs would have to change the Cozy Sign into a display that falls outside the definition of "sign" found at Salina Code § 42-764.

As the City does not know what changes Plaintiffs would be willing to consider (particularly considering Paragraph 29 of the Amended Complaint, which states, "Mr. Howard does not want to change, alter, or deviate from" the rendering shown in Paragraph 28 of the Amended Complaint), the City cannot (and does not) know all of the potential changes that could be made to the Cozy Sign that would take it outside of the scope of the definition of sign. It would be nearly impossible for the City to guess all of the changes that could be made to the Cozy Sign to turn it into a display outside the definition of sign. However, in general, Plaintiffs can change the Cozy Sign into a display that does not "announce, direct attention to, or advertise," which would remove the display from the scope of the definition of "sign" because the criterion in Salina Code § 42-764(2) would no longer be met, or Plaintiffs could relocate the display to the inside of the Cozy building, which would remove the display from the scope of the definition of "sign" because the criterion in Salina Code § 42-764(3) would no longer be met.

4. Please identify every government interest served by regulating Plaintiffs' mural.

OBJECTION AND RESPONSE: The City objects to this request to the extent it refers to the Cozy Sign as a mural or otherwise implies the Cozy Sign is not a sign under the Sign Code. Subject to and without waiving this objection, the purpose statement of the Sign Code, found at Salina Code § 42-500 (https://library.municode.com/ks/salina/codes/code_of_ordinances?nodeId=CH42ZORE_ARTXSI_DIV1GE_S42-500PU), sets forth the government interests served by regulating signs under the Sign Code. The City refers Plaintiffs to § 42-500 for a complete list of those interests. The Sign Code regulates all signs, not just the Cozy Sign and the government interests are served by the regulation of all signs (by addressing both their individual and cumulative impacts), not just the Cozy Sign. The government interests served by regulating signs like the Cozy Sign include aesthetics, pedestrian and traffic safety, and property values.

5. Please explain how the City determines if a mural is used to "announce, direct attention to, or advertise."

OBJECTION AND RESPONSE: The City objects to this request to the extent it refers to a mural as defined by Plaintiffs in their Terms and Definitions, a definition that cannot be found in the Salina Code. Subject to and without waiving this objection, the City applies the Sign Code as written. The City does not use or apply the term "mural" as defined by Plaintiffs in their Terms and Definitions. The Sign Code definition found in Salina Code § 42-764 refers to, in pertinent part, whether a "writing," "pictorial representation," "emblem," "flag, banner, streamer pennant, string of lights, or display," or "any other figure of similar character" is used to "announce, direct attention to, or advertise."

The City applies the plain language and ordinary use of the words and phrases "announce," "direct attention to," and "advertise." The City determines whether a "writing," "pictorial representation," "emblem," "flag, banner, streamer pennant, string of lights, or display," or "any other figure of similar character" is used to "announce" by evaluating whether the display makes a declaration about a fact, occurrence, or intention or proclaims or gives notice of, or identifies, a business, product, or event.

The City determines whether a "writing," "pictorial representation," "emblem," "flag, banner, streamer pennant, string of lights, or display," or "any other figure of similar character" is used to "direct attention to" by evaluating whether the display indicates, points to, points out, or specifies a location (in general, like a particular property, or specifically, like a building entrance or pickup window).

The City determines whether a "writing," "pictorial representation," "emblem," "flag, banner, streamer pennant, string of lights, or display," or "any other figure of similar character" is used to "advertise" by evaluating whether the display is meant to attract customers, encourage a commercial transaction, offer products or services in exchange for consideration (e.g., a display that says, "sliders, 5 for $5.00"); call attention to a brand, products, or services in order to encourage the purchase of products or services, in that it pertains to or references the goods or services for sale (e.g., the depiction of hamburger on the Cozy building wall).

6. Please explain how the City identifies "art" which is exempt from the mural- sign code regime. See (Doc. 16 at ¶¶ 62-65, 100, 115, 208, 216); (Doc. 16-2 at 4-6, 22-23, 28); (Doc. 16-4 at 6-7); (Doc. 27 at 9, 12).

OBJECTION AND RESPONSE: The City objects to this requests to the extent it seeks information protected by the attorney-client, work product and anticipation of litigation

privileges respecting Defendant's Brief in Support of its Motion to Dismiss. The City further objects to this request to the extent it seeks the City to explain the arguments made by the City's counsel as set forth in Doc. 27 at 9 and 12. The City further objects to the extent the request incorporates allegations to the Amended Complaint as Plaintiffs made the allegations and no answer has been filed to determine whether the allegations are admitted or denied. Based on these objections, the City will only respond to the non-objectionable portion of the request "Please explain how the City identifies 'art' which is exempt from the mural-sign code regime."

The City objects to the use of the phrase "mural-sign code regime" to refer to the Sign Code or BID Code. Subject to and without waiving these objections, the Sign Code regulates "signs" as defined by § 42-764. If a display is not a sign it does not fall within the scope of the Sign Code.

As to the term "art," the term "art" may be used from time to time as an imprecise short-hand for "not sign," but the term "art" is not included in the Sign Code and is not relevant to the determination of whether a display (whether it is artistic or not) is a "sign." This is because some artistic displays are also "signs," and some are not. To clarify, the artistic displays that are also signs are subject to regulation. The artistic displays that are not signs are just art, and because they are not also signs, they are not subject to regulation.

A "sign" under the sign code "is any writing (including letters, words or numerals), pictorial representation (including illustrations or decorations), emblem (including devices, symbols, or trademarks), flag, banner, streamer, pennant, string of lights, or display calculated to attract the attention of the public, or any other figure of similar character which: (1) Is a structure or any part thereof, or a portable display, or is attached to, painted on, or in any other manner represented on a building or other structure or on the ground; (2) Is used to announce, direct attention to, or advertise; and (3) Is not located inside a building.

Please see Response to Interrogatory No. 5 above for additional information responsive to this request.

7. Please identify any murals that exceed the mural-sign code regime's size restrictions which the Defendant has determined are unregulated "art" within the last 5 years.

OBJECTION AND RESPONSE: The City objects to this request to the extent it refers to the Sign Code or BID Code as the "mural-sign code regime." The City objects to this request to the extent it refers to a definition of "mural" in Plaintiffs' Terms and Definitions as that definition is not in the Sign Code or BID Code. Subject to and without waiving these objections, the City applies the Sign Code as written. The City does not apply the

term mural as defined by Plaintiffs in their Terms and Definitions. The Sign Code definition found in Salina Code § 42-764 refers to whether a "writing," "pictorial representation," "emblem," "flag, banner, streamer pennant, string of lights, or display," or "any other figure of similar character" is used to "announce, direct attention to, or advertise." The Sign Code regulates signs as defined by Salina Code § 42-764. If a display is not a sign it does not fall within the scope of the Sign Code. Displays that are not signs are not subject to the size limits of the Sign Code, and the City does not evaluate the size of such displays. Accordingly, the City does not have information about the location or sizes of displays that are not signs under the Sign Code. The City, does not have sufficient information to "identify" as requested. Moreover, "unregulated 'art'" (which the City interprets as displays that are not signs) cannot exceed the Sign Code's size restrictions because those restrictions only apply to regulated signs.

8. Please identify any murals that exceed the mural-sign code regime's size restrictions which the Defendant has determined are regulated "signs" within the last 5 years.

OBJECTION AND RESPONSE: The City objects to this request to the extent it refers to the Sign Code or BID Code as the "mural-sign code regime." The City objects to this request to the extent it refers to a definition of "mural" in Plaintiffs' Terms and Definitions that does not correspond to the Sign Code or BID Code. Subject to and without waiving these objections, the City applies the Sign Code as written, it does not use or apply the term "mural" as defined by Plaintiffs in their Terms and Definitions. The Sign Code definition found in Salina Code § 42-764 refers to whether a "writing," "pictorial representation," "emblem," "flag, banner, streamer pennant, string of lights, or display," or "any other figure of similar character" is used to "announce, direct attention to, or advertise." The Sign Code regulates signs as defined by § 42-764, and if a display is a sign within the Sign Code it is subject to the size limits of the Sign Code.

Pursuant to Request for Production No. 5, Defendant is producing citations issued within the last 5 years. Pursuant to F.R.C.P. 33(d), Defendant refers Plaintiffs to those documents produced in Defendant's forthcoming supplemental disclosure for information responsive to this request.

9. Please explain how the City determines if a mural "pertains to the goods or services for sale." See Amended Complaint at ¶¶ 32, 44, 52-54, 64-65, 128.

OBJECTION AND RESPONSE: The City objects to this request to the extent it refers to a definition of "mural" in Plaintiffs' Terms and Definitions as that definition is not in the Sign Code or BID Code. Subject to and without waiving this objection, the City applies the Sign Code as written, it does not apply the term "mural" as defined by Plaintiffs in their Terms and Definitions. The Sign Code definition found in Salina Code § 42-764 refers to whether a "writing," "pictorial representation," "emblem," "flag, banner, streamer pennant, string of lights, or display," or "any other figure of similar character" is used to

"announce, direct attention to, or advertise." Salina Code § 42-764 does not use the phrase "pertains to the goods or services for sale." Rather, Salina Code § 42-764 applies to a display if, among other things, it "announces, directs attention to, or advertises." One way to evaluate whether a display "advertises" is if it encourages the purchase of products or services, in that it pertains to or references the goods or services for sale.

10. For any Request for Admission that you denied, please explain the reasons for your denial.

OBJECTION: The City objects to this request to the extent it seeks to impose obligations outside the scope of, or different than, the Federal Rules of Civil Procedure. F.R.C.P. 36(4) requires a matter be admitted, or specifically deny the request or state in detail why the answering party cannot truthfully admit or deny it. Further, a denial must fairly respond to the substance of the matter.

11. Please identify the factual basis for the claim made in your Brief in Support of Defendant's Motion to Dismiss (Doc. 27 at 2) that "Plaintiffs' display is obviously a sign".

RESPONSE: The City refers Plaintiffs to the allegations in their Amended Complaint found at ¶¶ 15-29 for allegations showing Plaintiffs' display is a sign pursuant to Salina Code § 42-764. The City also refers Plaintiffs to the transcript attached as Exhibit A to Plaintiffs' Amended Complaint at 15:2-23 for additional facts showing Plaintiffs' display is a sign pursuant to Salina Code § 42-764. Plaintiffs sign is a "writing" "pictorial representation" "emblem" "flag, banner, streamer pennant, string of lights, or display calculated to attract the attention of the public" or "any other figure of similar character" that is "a structure or any part therefor, or a portable display, or is attached to, painted on, or in any manner represented on a building or other structure or on the ground," that "is used to announce, direct attention to, or advertise, and is not located inside a building."

The Cozy Sign is a display calculated to attract the attention of the public, that is attached to or painted on a building. It is used to announce, direct attention to and advertise and it is not located inside of a building. Specifically, the Cozy Sign contains a tag line announcing the infamous smells of the Cozy, it has an arrow directing attention to the building entrance and ordering window, and it advertises the hamburgers and toppings available for sale at the Cozy by depicting representations of them.

Respectfully submitted this 12th day of July , 2024.

s/ Aaron O. Martin	s/ Todd G. Messenger	s/ Amanda C. Jokerst
Aaron O. Martin Bar Number 24170 Attorney for Defendant City	Todd G. Messenger, CO Bar Number 38783 Pro Hac Vice Attorney for	Amanda C. Jokerst CO Bar Number 47241 Pro Hac Vice Attorney for

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ajokerst@fwlaw.com

VERIFICATION

I, Mike Schrage, as City Manager for the City of Salina, Kansas, declare that the foregoing responses to the interrogatories contained in the foregoing **DEFENDANT'S RESPONSES TO PLAINTIFFS' FIRST SET OF DISCOVERY TO PLAINTIFFS** are true and correct as of this date based upon my present knowledge, information, and belief.



Signature

Executed on July 12, 2024

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of July, 2024, I caused the foregoing **DEFENDANT'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** to be served on the following parties by electronic mail as follows:

Jeffrey Shaw.
Samuel G. MacRoberts
Kansas Justice Institute
12980 Metcalf Avenue, Suite 130
Overland Park, KS 66213
Telephone: 913-213-5121; 913-213-5018
E-mail: jeff@kansasjusticeinstitute.org; sam.macroberts@kansasjusticeinstitute.org

Attorneys for Plaintiffs

/s/ Amanda C. Jokerst
Amanda C. Jokerst

Exhibit Y
Sign Permit Application

Community & Development Services
Planning Division
300 West Ash | Room 205 | PO Box 736
Salina, Kansas 67402-0736

City of Salina

PHONE | 785.309.5720
FAX | 785.309.5713
TDD | 785.309.5747
WEB | www.salina-ks.gov

SIGN PERMIT APPLICATION

Site plan, elevation drawings with dimensions, & shop drawings are required with this submittal

108 N. 7th	The Cozy Inn
Address Where Sign(s) is / are to be installed	Name of Business

Steve Howard	8822 S Sunnyside Rd	67425	785-452-1153
Name of Business Owner	Mailing Address (if different than above)	Zip Code	Phone Number

West 44.4ft of the S. 20.8 ft of lot 103 on 7th St located at 108 N. 7th St
Legal Description (attach separate page if necessary)

Steve Howard	8822 S Sunnyside Rd	67425	785-452-1153
Property Owner of Record	Mailing Address	Zip Code	Phone Number

Same			
Owner of ~~Sign~~ mural	Mailing Address	Zip Code	Phone Number

Colin Benson	117 S. Santa Fe	67401	*
Sign Installer / License #	Mailing Address	Zip Code	Phone Number

PROPOSED SIGN(S)

Class of Work: ☒ New ☒ Alteration Estimated Date of Installation: _____

Illumination: ☐ Internal ☐ External ☐ Electronic Message Center ☒ None

Will any new electrical work be necessary? ☒ NO ☐ YES*- Electrical Contractor: _____

If YES,* ***separate permit is required* *and will be issued to the electrical contractor at the time the sign permit is issued*

Are there overhead power lines within 10 feet of proposed location of sign? ☒ NO ☐ YES

Type of **Proposed Sign(s)** – Indicate number of signs next to sign type:

☐ Pole ☐ Ground ☒ Wall ☐ Awning ☐ Canopy ☐ Marquee

☐ Projecting ☐ Roof ☐ Decorative ☒ Other (Describe): Mural exceeding allowable space for mural/sign age

EXISTING SIGN(S)

☐ Check box if there are no **existing signs** at this address at time of sign permit application or if existing sign(s) will be removed to install new sign(s).

If box is not checked, provide the information requested in the following table for each existing sign. Do not include signs or square footage of the sign(s) listed as proposed signs above or sign(s) that will be removed to install new sign(s).

EXHIBIT NO. 8

See Next Page >

City of Salina
Sign Permit Application | Page 2

INVENTORY OF EXISTING SIGNS

Type of Sign (Pole, Ground, Wall, Etc.)	Description	Square Footage (Per Individual Sign)	Height (If Applicable)
~~X~~ ~~Wall~~	~~See Attached~~	~~528 sq ft~~	
Wall Sign	N. facing wall sign	24 Sq ft	
Projection sign	4th St Projection Sign	24 Sq ft	
Awning Sign	4th St Awning Sign	4.68 Sq ft	

Steve Howard
PRINTED Name of Applicant

The Cozy Inn
Applicant's Company / Employer Name

Steveh@Cozyburger.com
Applicant's Email Address

785-452-1153
Applicant's Phone Number

SIGNATURE of Applicant

11-13-23
Date

For Office Use Only Below Line

Date Received: _____ Sign Permit Number _____

Is business part of a shopping center or zoning lot with multiple businesses? ☐ NO ☐ YES

Zoning	Square Footage of Signs	Illumination Approved
Historic District	New	Electrical Permit Required?
B.I.D.	Existing	Contr. License Verified?
Vision Triangle	Total	Proposed Set-back
	Total Allowed	Required Set-back

SPECIAL CONDITIONS:

Approved for Issuance By	Date	Permit Fee	Receipt #, Staff Initials

BLF-051, Rev. 10.2018


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Art or Advertising?

By Jeff Garretson | November 9, 2023



Is the mural art – or a billboard?

That's the question that has work paused on the north wall of the Cozy Inn in downtown Salina. Owner Steve Howard has made a million sliders and a million smiles at Salina's most recognized eatery since he bought the burger joint in 2007.

Now it may take a permit from the Department of Development Services to make him smile over the process he's learning about.

Howard tells KSAL News that he hired a local artist to paint a mural on an exterior wall of the restaurant but was told he needs to apply for a permit when commercial signage is involved.

According to Howard, he was told the work is a billboard because it advertises the burgers he sells inside.

Listen Friday at 8:35am to the KSAL Morning News Extra as Steve Howard joins Jeff and Bob in studio to give us an update.


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Art or an ad?: City of Salina pauses project at historic Cozy Inn restaurant



A Salina restaurant owner had to stop his mural project after speaking with city officials.

By Roman Campa and KWCH Staff
Published: Nov. 9, 2023 at 10:50 PM CST

SALINA, Kan. (KWCH) - Salina's historic Cozy Inn restaurant faces an obstacle from the city with a controversy over an unfinished project. At the heart of the disagreement is the question of what distinguishes a work of art from an advertisement as it applies to city rules.

Salina is seeing a rise in painted murals on local businesses but when the Cozy Inn -- a staple of the city's restaurant community for more than a century -- decided to paint its own mural, it received pushback.

Cozy Inn owner Steve Howard is voicing frustration after being told not to finish the mural on the side of the restaurant that's sold its famous hamburger sliders since 1922.

correctly, I guess."

The City of Salina argues that the work isn't a mural but a sign that advertises for the restaurant. And because it's recognized as a sign, it must fit the required dimensions set by the city.

Howard argues the project is a mural that represents the feeling of Cozy's.

"I don't want change. I want to paint my wall," he said. "I want to get my character up on the wall. Not just my character. the Cozy character truly is the fun of going inside."

Customers are showing their support.

12 News talked with the City of Salina's development team about the Cozy's mural. The group said while the project doesn't follow policy, they are hoping to have a conversation next week with Howard.

"Now, I'm just kinda (like), 'Hey, let me finish my project, please,'" the restaurant owner said.

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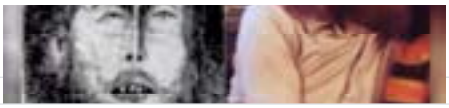
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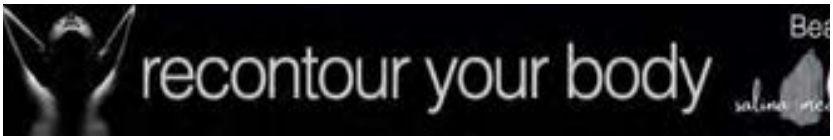
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NOV 19, 2023

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Cozy Inn Hamburgers 'sign' put on hold pending city approval

Posted Nov 19, 2023 7:02 PM



Cozy Inn Hamburgers' new "sign" was put on pause by the City of Salina because restaurant owner, Steve Howard, did not follow procedures set in place by the Salina City Design and Review Board. Photo by Olivia Bergmeier

By NATE KING

Salina Post

In a bid to show off the sights, sounds and smells of Cozy Inn Hamburgers restaurant, owner Steve Howard rushed to get a new "sign" painted on the north exterior wall of his restaurant.

On the heels of BOOM 2023, a privately funded and crowd-sourced mural festival held annually in town, Howard sought to add his creative spirit to one of downtown's most iconic buildings while drawing people inside Salina's smallest burger joint.

"It's not a billboard; it's artwork," Howard said. "It's my expression. It's my character going on my wall. I want to paint my wall."

The inspiration behind the "sign" stems from a couple Howard met when they visited The Cozy Inn for the first time.

"I had a couple come to the walk-up window, and I said, 'You need to come inside and experience the fun, experience the Cozy Inn,'" Howard said. "They said, 'Oh no, we were told not to go inside.' And I wanted to say so bad, but I didn't, 'You're 60-something years old, and you're still letting people tell you what to do?'"

Howard, the sole financier of the mural, sought the help of a local muralist Colin Benson to bring his greasy masterpiece to life. Work began on Nov. 3, one day before the much-anticipated Salina Crossroads Marathon.

According to Salina Downtown Inc. Executive Director Leslie Bishop Howard failed to complete the required paperwork mandated by the city of Salina.

"It's not just the Cozy Inn but all of the businesses in the downtown area have to fill out an application with the city for any changes to the exterior, whether it be an awning, a sign, that kind of thing," Bishop said. "That one piece (the application) did not happen in this case, and Steve has alluded to that and admitted to that."

Not long after Benson sketched the initial outlines and painted on the mustard and ketchup, videos made their way to social media, which alerted city staff.

"I think Sunday had a lot to play with that. People just videotaped and called, and then someone had to come in and say, 'Hey, this is what's happening there,'"Howard said. "Then I got a call from Dustin Herrs from Salina City Planning, and he's saying it's a billboard."

Howard said the mural is not a billboard.

"I don't have social media. I never reached out to anybody about anything — other than the artist," Howard said. "I'm not trying to stir anything out. I just want to paint a wall."

Bishop said Salina Downtown Inc. supports Howard.

"We're behind him 100%, and we will write Steve a letter of support if he needs it," Bishop said. "Today, we met with some city officials, and we're filling out all the proper paperwork."

Bishop also reiterated that the muralist is not the issue — the issue lies with filing the necessary

paperwork.

"Colin is fine to do this mural that it has nothing to with him as an artist, and he doesn't even have to be approved by the city. The mural itself needs to be approved before work can begin," Bishop said.

Howard said more than 45,000 customers visit the Cozy Inn location in downtown Salina every year.

"That is a lot of people coming to downtown," Howard said."This mural is going to just be one more thing to make people go 'Wow!'"

Salina City commission eager to build consensus

During the Monday Salina City Commission meeting, Salina City Manager Mike Schrage provided context for why a code violation citation was issued.

City of Salina Codes Article X Section 42-521 for C-3 and C-4 commercial districts dictate a business's total area for advertisements or signs on its exterior.

The Cozy Inn is categorized in a C-4 commercial district, which Schrage said indicates a

"mathematical formula." The product of the formula determines a business's allotted sign space.

Each commercial zone has a unique formula that determines sign space — other zones, like C-5, 6 and 7, allow for four square feet of sign space for each foot of linear street space.

"Our codes in this particular case have been in effect since 1966 — that doesn't mean they can't be changed," Shrage said.

Schrage said Cozy's Hamburgers currently has three signs, which utilize 84% of their total sign allotment. The new mural would put it nine times over the allowable size.

"First and foremost is submitting a sign application so we have the specifics of what they intend, and we can look at that relative to the code," Schrage said.

Schrage clarified that city staff did not contact Howard with violation enforcement in mind.

"[It was] agreed to a pause on proceeding with the project so we can sort through the codes," Schrage said.

Based on the "sign" and art renderings Howard provided the city, Schrage said there is a disconnect between what Cozy intends and what the code allows.

Schrage outlined two possible avenues Cozy Inn can pursue to become compliant with or change the code. The first option is to go through a variance process with the Board of Zoning Adjustment, which Schrage said is rigorous.

The variance process requires the Board of Zoning Adjustments to reach conclusions based on five criteria, which can be problematic for Cozy Inn's case.

"There has to be something unique in terms of insurmountable challenge or something that the code might not have taken into account," Schrage said.

Schrage referenced a single case where city staff granted variance due to geographical challenges limiting the advertisement's effectiveness.

The other option is to amend the city code.

"We have a process whereby someone can make application requests for code amendment," Schrage

said. "To accommodate what Mr. Howard desires, we need to increase the allowable square footage nine to 10 times what our code currently says."

Amending the code leads to possible future approvals to cover an exterior wall entirely or even all four sides of the business.

"That starts to get very customized, very detailed, and the key factor is that it has to be applicable across the board," Schrage said.

The code currently cannot bend to specific businesses, but an amendment could allow for consistent flexibility for downtown buildings' advertisements.

Schrage reminded commissioners that this type of exception could set a precedent for future, possibly less artistic signs. While The Cozy Inn's case is unique, amending the code for the mural would take time.

"That's pretty significant policy decision. It's going to take some work," Schrage said.

Schrage said city staff is prepared for code drafting and running the code amendment through the necessary committees for recommendations.

"The artist indicated this morning [Monday] they washed the building in preparation for painting and don't necessarily want to leave it half finished," Schrage said. "If it's going to take into the spring before they [the muralist] have an answer, their preference is to paint it white and start over again."

Repainting the exterior wall white is likely the cleanest way from a code standpoint but is not required to continue the process.

Lauren Driscoll, director of community and development services for the city of Salina, provided commissioners with criteria that categorize something as a sign. The definition of a sign includes anything with writing, including letters, numbers, words and a pictorial representation.

"This includes illustrations or decorations," Driscoll said.

Driscoll further defined a sign as a message or image meant to attract the public's attention, including a

painting on a wall located on the exterior of a building.

"From that pure definition, this starts to tick all the boxes that make it a sign before we even get into a discussion of commercial speech versus non-commercial speech," Driscoll said.

The Office of Community Development received numerous calls asking about other signs in the community and whether or not they comply, Driscoll said.

Driscoll explained that in downtown, a business has three square feet of signage for every foot of frontage it has.

The formula utilizes the "frontage" length of a building, meaning the horizontal distance the building's foot takes up on a given street. The Cozy Inn's frontage area is only 20.8 feet, which amounts to a total sign area allowed of about 63 square feet.

"The Cozy building is a very little building," Driscoll said. "[Cozy Inn has used] 52.88 square feet, leaving just over 10 square feet of remaining surface area of signage allowed for the building."

In the Cozy's situation, when applying the square footage analysis to the new sign, it's approximately 528 square feet which is significantly greater than the allotted amount in the C-4 district.

Driscoll said downtown has a unique challenge, its various-sized and shaped buildings and can begin a domino effect from decisions made by Zoning and Planning.

Driscoll continued, "How the buildings work together, the scale of messaging of signage really does matter in that environment plus the C-4 district is also very pedestrian focused. For example, Ninth Street is not a pedestrian environment, but everything in the C-4 district is scaled for both cars and people. So that also has to do with some of our sign regulations."

During her remarks, Driscoll gave the example of a coffee house with a dove and peace sign to illustrate the point further.

"For example, if the coffee house has a dove with an olive branch and it says the word peace on the side of it, that's not a sign because even though the word peace is there, you're not selling peace inside, and

coffee may do that for some people, but in general, the dog, the olive branch, the peace is not part of a commercial transaction."

Driscoll contrasted her example by saying if the coffee house had a steaming cup of coffee, those images would draw you into the use of the building.

A different case focused on a mural depicting peaceful and calm scenes but still advertised the business it was painted on.

"There's actually a case law example of a mural, which is actually a sign of a bunch of puppies playing in a field, and it's across from a dog park," Driscoll said. "The mural happens to be on a building that is a doggy daycare. That was deemed commercial signage."

The case law involved a business named Wag More Dogs located next to a dog park in Arlington County, VA, where federal courts deemed the mural as an advertisement.

Salina Vice-Mayor Bill Longbine commented that The Cozy Inn is an essential staple in Salina's food

industry and that Howard's intentions for the artwork were not an advertisement.

"I think if this had been anything other than a 101-year-old, historic institution, it wouldn't be an issue," Vice-Mayor Bill Longbine said. "I really believe he intended to get in on the whole mural trend."

Salina City Commissioner Trent Davis said even with Cozy Inn's history in the community, allowing the mural to go up outside of city regulations would create a precedent for other businesses to use benevolently or maliciously.

Davis brought up an example of an adult store using sexually explicit imagery of their products on a building.

"Or if we had same-sex couples over the rainbow bridge on the side of the building, saying, 'Salina Friends of the LGBTQ Community, we'd have folks coming up on the other side saying, Well, how can you allow that?'" Davis said. "I mean, that's clearly a sign. So whatever we do, it's got to be something that stands the test, no matter who's coming up to the podium."

City Commissioner Greg Lenkiewicz stressed the importance of consistency for Planning and Zoning regulations but understands the artistic value and weight that Cozy Inn wants to add to the community.

"Unfortunately, we find ourselves in a situation where I think we all appreciate the art, but we are bound by laws [codes] of our governing body," Lenkiewicz said. “We can't just arbitrarily decide, yes, this rule we're not going to enforce, and this rule, we're going to apply. There's a sense of fairness and uniformity to how we do things."

Salina City Attorney Greg A. Bengtson said most of what a city regulates is subject to a relatively simple test of whether there is a nexus between the regulation and a legitimate public purpose.

“The Supreme Court has told us now when you are evaluating anything in the commercial speech category, it undergoes what is called an intermediate scrutiny level,” Bengston said. “It’s higher than that just rational Nexus.”

Bengston provided counsel to city commissioners explaining what could be done in order to address the

issue in a legal and timely manner.

“We are in an area where we as your local general counsel recognize.... I think there are efficiencies even in terms of the cost of having the specialized expert handling those sorts of questions, rather than you all having to wonder if we've figured that out or not,” Bengston said.

Commissioner Karl Ryan voiced his support for hiring an outside consultant, citing the need for wisdom and experience surrounding codes for signage.

“There are people that have been following this law for periods of time and it's important that we have their wisdom and experience and I'm sure it'll be much cheaper than us plowing a new road in,” Ryan said. “I have a lot of confidence in our staff and figuring any kind of problem out and providing remedies but it looks like we'll get much quicker answers if we buy some expertise.”

Driscoll explained that changing code takes time including public input.

“One of the things that takes a little time versus me sitting in my office just going in one line at a time, is

there needs to be public process," Driscoll said.

Driscoll said the issue regarding signs and commercial speech is not confined to downtown.

"I mean, this is something that we're seeing, not just downtown but in the other areas. And I think to have time to have conversations with those folks and ask, how are these rules feeling and fitting as we've changed as a community over the last few years is an important part of that process."

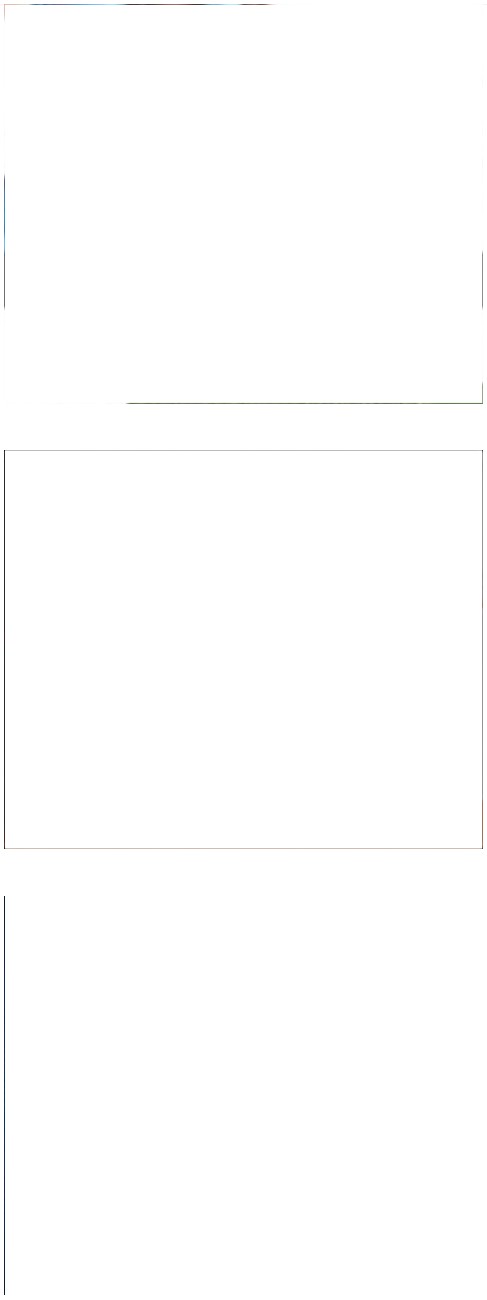
According to Driscoll, Howard submitted the sign permit application Monday evening. A decision was not made by the commission on Monday regarding hiring an outside expert to answer questions commissioners may have.

Salina Post will update this story as more information becomes available.

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SALINA JOURNAL

NEWS

'Mural at the Mill' celebrates completion with ribbon-cutting in downtown Salina



Charles Rankin
Salina Journal

Published 2:01 p.m. CT Oct. 21, 2021

Standing high about the skyline of downtown, "Mural at the Mill," the latest piece in the Salina Kanvas Project is now complete.

The mural, which was placed on the 100-foot tall H.D. Lee Flour Mill on North Santa Fe Avenue, was completed by Guido Van Helten of Australia, who has done similar, large-scale projects around the world.

A vision for Salina

The Kanvas Project was the vision of Travis Young, CEO of Vortex Global. He said the hope is that the work done will be something to bring more murals and street art to the downtown area and to Salina as a whole.

"We want Salina to be a destination versus a spot to fill up with gas along the interstate", Young said on the project's website. "This will help bolster business opportunities and support the amazing institutions we already have here in Salina."

Young said his idea for the Kanvas project came after seeing the street art community while living in York, England before moving back to Salina.

He told his friends he was moving and asked them if there was a way to bring some of that culture with him.

"Maybe I can get one of your artists to paint something downtown, because we have these great big silos that are in disuse," Young told his friends in England.

At that point he was introduced to the work of Van Helten.

"It's been in my mind ever since," Young said.

He said when he moved here, things downtown were not ripe for this kind of work, but when the revitalization of the area and the Salina 2020 movement began to take shape, he knew it was time to get this project going.

"Once it got started and you started to see the difference, I was like, '(I need to) call Guido,'" Young said.

He said Van Helten came, agreed to do the work and started the process after a donation from John and Kim Vanier to underwrite the project.

A mural about the future

Young said Van Helten spent time in the city, trying to get a feel for what the Salina community was about.

"It didn't matter if he was at a ball diamond, at a church or if he was just talking to people in the street, it all came down to one thing," Young said. "(Salina's) a great place to raise a family. That's where he was inspired by the children, by what they were doing."

The mural itself is of Salina children playing "Ring Around the Rosie." The entire mill building is encircled by the children, using a photocollage of them taken by one of the kids themselves.

"That makes it even more phenomenal, that it has this tight connection to the community, as it being a great place to raise a family," Young said.

An big attraction to bringing people to Salina

During the celebration, Eric Brown, president and CEO of the Salina Area Chamber of Commerce, said things like the mural are a "catalyst" for the community, not only with its size, but because of the number of people and organizations that make them happen.

"We have so many assets in this community that are so much bigger than just one individual," Brown said.

Brown said this mural is something that will bring people to the community.

"We're already seeing people stopping by, coming off the interstate, taking pictures," Brown said.

He said the Kansas Department of Transportation shows 16 million cars passing along the interstate system every year. By bringing those people into the city with attractions like this, Brown said that increase the money that comes to the community.

"People coming down to take a picture, they're going to hit maybe the coffee shop, eat lunch downtown or maybe even shop at the local box stores," Brown said.

He said it will also put "heads in beds" and help to bring in revenue with the transient guest tax.

Finally, Brown said this mural, in its message and in its culmination to completion, is all about this community.

"Art is really in the eye of the beholder," Brown said. "When you look at this, this talks about the community spirit. It talks about what's happening. A lot of the things that happen downtown, down south (and) across the community don't happen by one individual or one group."

He said the game the children are playing is one engrained in the culture of society and speaks to how people come together.

"If they aren't playing together, they aren't happy and aren't smiling," Brown said. "We see the smiles."



STATE / REGIONAL

City puts pause on Salina mural, restaurant owner says, 'I believe we'll work through this'

by: Asia Cymone Smith
Posted: Nov 13, 2023 / 10:25 PM CST
Updated: Nov 14, 2023 / 02:29 PM CST

SHARE

SALINA, Kan. (KSNW) — The Cozy Inn restaurant in Salina has been told to pause work on a mural on the side of the building. The City says the painting violates Salina's sign code policy.

The Cozy Inn owner, Steve Howard, says the art was intended to share the culture of the over 100-year-old restaurant.

"When you order at the walk-up window, you don't get the true character … 'the show,' as you could say," explained Howard.

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The artwork on the outside is meant to tell that story.

“You never know where the conversation is going to go in here, so my finished product on this mural are spaceships. They’re hamburgers, but they’re UFOs,” he said.

Howard says downtown Salina has a growing popularity of murals. In October, they hosted Boom! Salina, where artists decorated the streets with artwork.

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“I thought I was doing the right thing for Salina downtown because it’s all artsy. I didn’t know it’d be this big of an issue,” he explained.

However, the city manager says it’s not just art.

“It includes a message that pertains to the good or service for sale, and that makes it a sign and makes it subject to the sign code,” said Mike Schrage, Salina City Manager.

The current code states businesses in the C-4 district, like The Cozy Inn, are limited to four signs, which must fit into the zoning lot restrictions. Schrage says the mural is nearly 10 times larger than what the code allows.

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“It shouldn’t matter where it is, what it is, as long as it’s art. And I think it’s art. I think that’s pretty much art,” said Benson.

In the City Commission meeting on Monday, there was a discussion about a solution to the unfinished art. Some commissioners considered bringing in an outside consultant to clarify the difference between a sign and art.

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Most Commissioners agreed that the 57-year-old code could use changes to adjust the growing artwork in Salina. They say they want to collaborate with The Cozy Inn to find a solution.

“Whatever we do in the way of a change in zoning code needs to apply to everyone. It can’t be business specific or particular to that sign,” explained Schrage.

New area in downtown Hays allows for drinking outside of bars, restaurants ›

There is no timeline for a possible change to the city sign code. Until a decision is made, the project is paused indefinitely.

“Even if it is next year, I get it. But man, it just kind of puts a thorn in my side going man, it’s not finished,” said Benson. He says he is willing to paint the wall back to white until they figure out how to proceed.

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“That wall’s been blank for so many years. Just white wall, and I just want to add character to it,” said Howard.

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NAIL COLOR & CARE / 2 Days Ago

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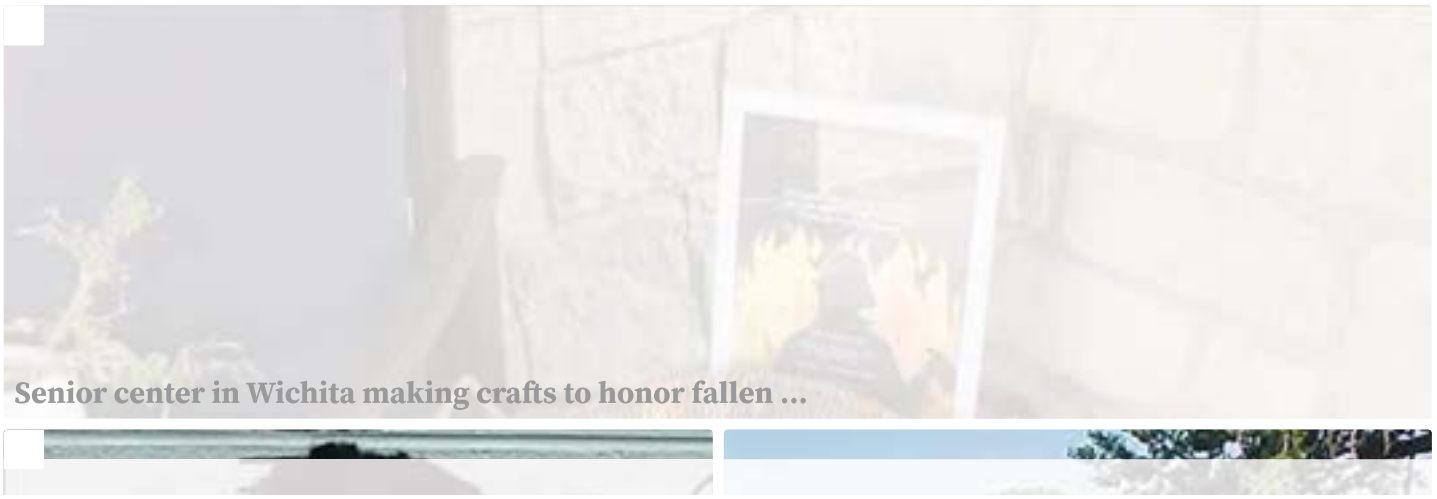
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Source: AAA Updated on 9/3

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Exhibit AA
On-Hold Letter

DEVELOPMENT SERVICES
PLANNING AND COMMUNITY DEVELOPMENT
Dustin Michelson, Planner I
300 West Ash · P.O. Box 736
Salina, Kansas 67402-0736

City of Salina

TELEPHONE · (785) 309-5720
FAX · (785) 309-5713
TDD · (785) 309-5747
E-MAIL · dustin.michelson@salina.org
WEBSITE · www.salina-ks.gov

February 8, 2024

Steve Howard
The Cozy Inn
108 N. 7th Street
Salina, KS 67401

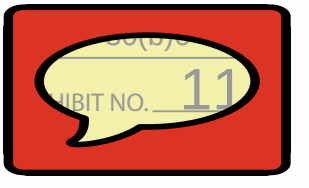
RE: Existing Painted Wall Sign/Mural at 108 N. 7th Street

Dear Mr. Howard:

We are in receipt of your Certificate of Compatibility application dated November 13, 2023 and your sign permit application (#23-2221-SIGN) dated November 15, 2023, submitted on behalf of The Cozy Inn, requesting approval of an existing painted wall sign/mural at 108 N. 7th Street. As discussed in previous conversations regarding this sign/mural, the total square footage of the signage installed at 108 N. 7th Street exceeds the maximum gross surface area allowed on this property per the C-4 zoning district sign regulations (Sec. 42-521). Additionally, 108 N. 7th Street is located in the Downtown Salina Business Improvement District Number 1, which requires a Certificate of Compatibility to be approved by the Downtown Design Review Board (DRB) before City Staff may issue a permit for any work to construct; demolish; or change the existing exterior design, material, color, texture, finish, or appearance of any building or any other improvement to real property in the Salina Business Improvement District Number 1 (Sec. 2-207).

This letter is to inform you that the City is engaging in a comprehensive review of the City's sign regulations, which will include a review of the regulations pertaining to painted wall signs. As a result of this, and due to the unique nature of the existing signs at The Cozy Inn, our office will be placing your Certificate of Compatibility application and your sign permit application on-hold until our review of the sign regulations is complete. Once we have completed that code review process, Staff will then be able to facilitate a Certificate of Compatibility application to be considered by the DRB, as well as review your sign permit application in the context of any sign regulations that may be revised during our code review. Additionally, during this period, the City will withhold any further zoning enforcement actions regarding the existing signs at The Cozy Inn until City Staff is able to further review the sign permit application under any changes to the sign regulations that may come out of this comprehensive review.

As part of the City's review of the sign regulations, we'll be bringing in an outside consultant who is experienced in assisting municipalities with updates and revisions to their sign regulations, an important component of the process will involve gaining insight from community stakeholders about the existing regulations relating to murals and painted wall signs and potential updates to the codes. Our office is in the process of scheduling a stakeholder meeting for Friday, February 16, 2024, and we will follow up with specific details of the meeting in hopes that you are able to attend.



Thank you for your cooperation in this matter. If you have any questions, please contact me or Dean Andrew, Zoning Administrator, at (785) 309-5720.

Sincerely,

Dustin Michelson
Planner I

CC: Dean Andrew, Zoning Administrator

Exhibit BB
Michelson
Deposition Excerpts

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

.

.

COZY INN, INCORPORATED, d/b/a
THE COZY INN; STEPHEN HOWARD,
Plaintiffs,

.

vs. Civil Action No. 6:24-cv-01027-TC-ADM

.

CITY OF SALINA, KANSAS,
Defendant.

.

.

DEPOSITION OF
DUSTIN MICHELSON,

taken on behalf of the Plaintiffs, pursuant to Notice to Take Deposition, beginning at 5:08 p.m. on the 12th day of September, 2024, at Clark, Mize & Linville, 129 S. 8th Street, in the City of Salina, County of Saline, and State of Kansas, before Sandra S. Biggs, Kansas CCR No. 0716.

.

.

I was given to write the letter was over that.

Q. Okay. So you were given information by someone else in the Planning Department?

A. Yes.

Q. Who would that be?

A. For the letter?

Q. Yes.

A. From Lauren Driscoll --

Q. Okay.

A. -- who told me to write the letter.

Q. All right. Did she tell you what she wanted the letter to say?

A. Yes.

MS. JOKERST: Object to form.

THE WITNESS: Sorry.

BY MR. SHAW:

Q. What did she tell you that she wanted the letter to say?

MS. JOKERST: Object to form.

A. That I needed to state that we were in receipt of it, that it was over the maximum area by the existing code and the rest of the stuff in the letter.

BY MR. SHAW:

Q. Okay.

A. I mean I can read right from the letter.
Q. Is it fair to say -- well, let me take a step back. When you wrote this, did you review either the sign permit application or Certificate of Compatibility application?
MS. JOKERST: Object to form.
A. I likely did.
BY MR. SHAW:
Q. Okay. Did you conduct any independent analysis of the applications?
MS. JOKERST: Object to form.
A. I don't recall if I specifically did any -- any calculate -- like calculating what the signage allowance is or not.
BY MR. SHAW:
Q. Were you relying upon figures provided to you by Miss Driscoll?
A. Yes.
Q. Okay. Do you know why the city -- let me rephrase. Do you know what about the mural at the Cozy Inn makes it a sign?
MS. JOKERST: Object to form.
A. I don't know specifically on this.
BY MR. SHAW:
Q. Okay. Do you see on the second paragraph

where it says as a result of this and due to the unique nature of the existing signs at the Cozy Inn, our office will be placing your Certificate of Compatibility application and your sign permit application on hold until review of the sign regulation is complete?

A. Yes.

Q. Did Miss Driscoll tell you to place the applications on hold?

MS. JOKERST: Object to form.

A. Yes.

BY MR. SHAW:

Q. Okay. Do you know -- sorry. Were you going to say something?

A. To clarify, I didn't place the permits on hold. This letter I was told to communicate what was happening.

Q. Okay. So do you know who placed the applications on hold?

A. No.

Q. Okay. You were just told to communicate that to the applicant?

A. Yes.

Q. Okay. Do you know if the -- either the sign code or the building improvement district

code allow for applications to be placed on hold?

MS. JOKERST: Object to form.

A. No, I don't know.

BY MR. SHAW:

Q. Okay. Can we turn to Exhibit 14, please? Are you familiar with this exhibit?

A. Yes.

Q. What is this exhibit?

A. It's a letter to Mike Sample written by me.

Q. Do you know who Mike sample is?

A. Only based on having putting the name on the letter.

Q. Okay. Was this letter sent regarding a business known as Blacksmith Coffee?

A. Yes.

Q. Had blacksmith also applied for a sign permit?

MS. JOKERST: Object to form.

A. Yes.

BY MR. SHAW:

Q. And in the second paragraph, do you also communicate to this applicant that the application was being placed on hold?

A. Yes.

CERTIFICATE

STATE OF KANSAS

COUNTY OF SHAWNEE

I, Sandra S. Biggs, a Certified Court Reporter, Commissioned as such by the Supreme Court of the State of Kansas, and authorized to take depositions and administer oaths within said State pursuant to K.S.A 60-228, certify that the foregoing was reported by stenographic means, which matter was held on the date, and the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of the same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and seal this 20th day of September, 2024.

Sandra S. Biggs

Sandra S. Biggs, C.C.R No. 0716

SANDRA S. BIGGS STATE OF KANSAS CERTIFIED SHORTHAND REPORTER

Exhibit CC
Yard DRB Packet

City of Salina

BUSINESS IMPROVEMENT DISTRICT NO. 1

DESIGN REVIEW BOARD

Design Review Board meetings will take place via Zoom until further notice. You can view the meetings at the City of Salina YouTube channel, https://www.youtube.com/cityofSalinaKansas

To participate in the meetings, citizens will need to use the Zoom link – https://us02web.zoom.us/j/82053180567

If citizens wish to speak, either during the public forum or when the Chair requests public comment on an item, citizens must raise their hand so that the meeting host can allow them to speak.

Citizens can also send written comments or questions to Design Review Board Members vie email at plangroup@salina.org

In order for the Board Members to have an opportunity to review comments in advance of the meeting, please email your comments or questions by 12:00 p.m. Thursday, prior to the 4:00 p.m. meeting.



City of Salina

SALINA DOWNTOWN

MEETING AGENDA

DESIGN REVIEW BOARD
MEETING VIA ZOOM
Thursday, January 14, 2021
4:00 P.M.

1. **CALL TO ORDER / ROLL CALL / KOMA CONFIRMATION**
   (1.1) Call to Order
   (1.2) Roll Call
   (1.3) Chair requests staff confirmation that Kansas Open Meeting Act required notice has been properly provided.

2. **APPROVAL OF MINUTES**
   (2.1) Approval of the minutes of the regular meeting held on November 12, 2020.

3. **NEW BUSINESS**

Public Hearing Items

(3.1) Application #CC20-14, filed by Jacob Wilson on behalf of Restore Construction, LLC requesting the approval of a Certificate of Compatibility to allow the demolition and renovation of the existing buildings located at the northwest corner of Fourth Street and Walnut Street. The subject property is legally described as Lot 130, 132, 134, 136 and 138 on Fourth Street in the Original Town (now City) of Salina, Saline County, Kansas and addressed as 211 E. Walnut Street / 138 S. Fourth Street.

Administrative Items
None

Preliminary Discussion Items
None

4. **UNFINISHED OR OTHER BUSINESS**
   None

5. **PUBLIC FORUM**

6. **ADJOURNMENT**

Record of this Meeting
This public meeting will be recorded by Salina Media Connection and available to view online free of charge at http://www.salinatv.org/index.php/city-of-salina. To receive meeting packets by email, subscribe to *Email Notifications* at http://www.salina-ks.gov/content/18160/23455/23473/default.aspx. Meeting DVDs and paper copies of meeting packets are available upon request (retrieval and/or duplication fees may apply). Please contact the Community and Development Services Department at building.services@salina.org or by phone at 785.309.5715 to request these open public records.

City of Salina

ADDRESSING THE DESIGN REVIEW BOARD

The public is invited to speak to the Design Review Board during the public hearing portion of any item under discussion and during the Public Forum. Please raise your hand and after receiving recognition from the Chairman, approach the front, state your name, address and purpose for speaking.

Generally, the order of presentation after introduction of an item by the Chairman will be:

1. Determination if the applicant or his/her representative is present.
2. Brief presentation by the staff.
3. Comments by the applicant.
4. Comments by interested citizens.
5. Additional comments by the applicant and/or citizens, as appropriate.
6. Closing of public comment portion of hearing by Chairman.
7. Design Review Board discussion and action.

If an application is approved by the Design Review Board, a Certificate of Compatibility will be forwarded to the City Building Services Division and will allow a building/sign or demolition permit to be issued for that work. Any applicant may appeal a decision of the Board to the Salina City Commission. A protest or appeal must be filed with the City Clerk no later than fourteen (14) days following the Board's decision. Should you wish to file a protest or appeal on any application, forms may be obtained from the City Clerk's Office, Room 206, City-County Building, 309-5735. If you have any questions or concerns, please contact the Community and Development Services Department, Room 205 of the City-County Building, 309-5720.

City of Salina

SALINA DOWNTOWN

MEETING MINUTES

DESIGN REVIEW BOARD
CITY-COUNTY BUILDING, ROOM 107
THURSDAY, NOVEMBER 12, 2020
4:00 P.M.

1. CALL TO ORDER / ROLL CALL / KOMA CONFIRMATION

(1.1) Call to Order

Chair Martens called the meeting to order at 4:00 p.m.

(1.2) Roll Call

Board Members Present:
Gary Martens (Chair), Katherine Kitchen, Jennifer Noonan

Board Members Absent:
Haley Helzer

City Staff Present:
Dean Andrew, Zoning Administrator; Dustin Herrs, Assistant Planner

Mr. Andrew informed the Board that Vice-Chair Mukesh Patel has resigned from the Board.

(1.3) Chair requests staff confirmation that Kansas Open Meeting Act required notice has been properly provided.

Mr. Andrew confirmed that the packet was posted and the required notice of today's meeting was provided.

2. APPROVAL OF MINUTES

(2.1) Approval of the Minutes of the October 29, 2020 special meeting.

A motion was made to approve the minutes of the October 29, 2020 special meeting by Board Member Kitchen, seconded by Board Member Noonan and carried by vote.

3. NEW BUSINESS

Public Hearing Items

(3.1) Application #CC20-13, filed by Guy Walker on behalf of Blue Beacon International, Inc. requesting the approval of a Certificate of Compatibility to allow the construction of two new metal canopies and the installation of a new projecting sign

on the National Bank of America Building at the southwest corner of Santa Fe and Iron. The subject property is legally described as Lot 110 on Santa Fe Avenue in the Original Town (now City) of Salina, Saline County, Kansas and is addressed as 100 S. Santa Fe Avenue.

Mr. Andrew presented the staff report with visual graphics which are contained in today's meeting packet.

Chair Martens asked the Board if there were questions for staff.

Chair Martens asked for Mr. Andrew to clarify that the 52 sq. ft. sign exceeds the size limitations in C-4.

Mr. Andrew stated that because the sign exceeds 48 sq. ft., staff would not be able to issue a sign permit even with the Board's approval of the location and design. He continued that the applicant will need to reduce the size of the sign to the allowable size.

Chair Martens clarified that if the applicant wants the sign to be 52 sq. ft. they would have to go before the Board of Zoning Appeals or apply for a text amendment which Mr. Andrew confirmed.

Board Member Kitchen asked what staff's concern was for the wrapping of the pillars.

Mr. Andrew stated that in staff's experience with National Register properties and the Secretary of Interior's Standards for Rehabilitation, applicants are discouraged from covering up original materials. He continued that staff could have misinterpreted the application but the concern is that the Downtown Guidelines and the Secretary of Interior's Standards for Rehabilitation discourage covering up or obscuring original façade materials. He continued that if it was limestone today and then wrapped in metal cladding, it would be covering original materials. He stated that if it was already covered, then it would not be covering just replacing.

Chair Martens invited the applicant to address the Commission.

Guy Walker, 500 Graves Boulevard, stated that the building was built in the 1920's and did not have the glass storefront, but a stone facade. He stated that it was renovated in the 1960's which changed the building. He stated that the two columns have metal on them now and because they are exposed now with this construction, they are visible.

Ben Moore, architect for the representative, stated that the existing metal of the canopies matches those wrapped columns. He stated that they have looked at replacing the deteriorated metal in a complimentary fashion with a prefabricated color of charcoal gray.

Mr. Walker returned to the microphone and stated that the sign square footage can be reduced to 48 sq. ft. to conform with the size limitation.

Mr. Andrew asked for the applicant to provide an update on National and State Historic Tax Credits.

Mr. Walker stated that the review is still pending. He stated that they submitted this project as an amendment to their application. He stated that they will not be doing anything that would impact their tax credits because they need those to reimburse some of the costs from interior renovations.

Mr. Moore returned to the microphone and stated that their preservation consultant is working with the state on the review now.

Mr. Walker returned to the microphone and stated that the preservation consultant is well versed in what the State will accept. He stated that she gave them advice on what the State will agree with or decline. He stated that this is not a major change and the color change is just to update the storefront.

Mr. Walker stated that the renderings show a blue colored text for the UMB sign on the north canopy and asked Mr. Andrew if they would have to come back before the Board to change that text color to white.

Mr. Andrew stated that staff could approve that administratively through the sign permit application and it would not have to go back before the Board.

Mr. Andrew stated historically staff refers to this building as the National Bank of America Building although it is now occupied by UMB Bank.

Mr. Walker stated that the reason they are trying to name the building the Hoffman Building is to give the building a full identity instead of just for one specific tenant and the Hoffman family was one of the families connected to the National Bank of America building.

Chair Martens asked the Board if there were other questions for the applicant's representative. There were none.

Mr. Andrew stated that staff just wanted to call attention to the different aspects impacting historic properties because there is a higher level of scrutiny when National and State Register buildings are being looked at. He stated that if the applicant is using a preservation consultant then they are in good hands.

Chair Martens confirmed there were no comments or questions from members of the public, closed the public hearing and brought the item to the Board for discussion and action.

MOTION:	Board Member Kitchen made a motion to approve Application #CC20-13 with the conditions listed in the staff report and that the projected sign be reduced to 48 sq. ft. and that if any major changes were made that the application be brought back before the Board for review.
SECOND:	Board Member Noonan
VOTE:	Motion passed 3-0.

Mr. Andrew stated that they will provide the applicant with a letter describing the actions taken by the Board today and what the next steps to take are.

Administrative Items
None

Preliminary Discussion Items
None

4. UNFINISHED OR OTHER BUSINESS

The next regularly scheduled meeting of the Design Review Board is on December 10, 2020. Mr. Andrew stated that there are no applications filed at this time and that staff will notify the Board if the meeting will be held.

Mr. Andrew stated that staff will work with Salina Downtown Inc. and Penny Bettles to get interested citizens to submit an EOI if they are interested in joining the Design Review Board.

Board Member Kitchen asked if there are any specific openings on the Board or if the positions were for Community At Large members.

Mr. Andrew stated there is one spot available for a Design Professional, filling the spot of Maggie Gillam's whose term expired in August. He continued that there is another opening for a property owner but believes that Board Member Helzer may qualify for that position. He stated that they will work with Salina Downtown Inc.to help find interested citizens.

5. PUBLIC FORUM
None

6. ADJOURNMENT

A motion was made to adjourn the meeting by Board Member Noonan, seconded by Board Member Kitchen and carried by vote.

The meeting adjourned at 4:32 p.m.

_____
Gary Martens, Chair

ATTEST:

_____
Dean Andrew, Secretary

Record of this Meeting

This public meeting was recorded by Salina Media Connection and available to view online free of charge at http://www.salinatv.org/index.php/city-of-salina. To receive future meeting packets by email, subscribe to *Email Notifications* at: http://www.salina-ks.gov/content/18160/23455/23473/default.aspx. Meeting DVDs and paper copies of meeting packets are available upon request (retrieval and/or duplication fees may apply). Please contact the Community and Development Services Department at building.services@salina.org or by phone at 785.309.5715 to request these open public records.

Salina Downtown

Salina

Application for a Certificate of Compatibility
Business Improvement District - Design Review Board

PLF -039 Certificate of Compatibility

Please return the completed application to:
Development Services Department
300 W. Ash, City-County Building, Room #205
Salina, KS 67402-0736
785-309-5720 FAX 785-309-5713
Email: john.burger@salina.org

The City Planning Division:
- *Provides technical assistance to the applicant*
- *Receives the completed application*
- *Provides a copy of the application to the SDI Office for input*
- *Schedules the Design Review Board hearing*
- *Presents the application to Design Review Board*
- *Provides notice of approval to applicant*

Please see the Schedule for Design Review Board hearings for the deadline for submissions. An applicant or his representative must attend the review hearing in order for the item to be considered at that meeting.

Applicant Please Complete the Following:

1. Property Address 211 E. Walnut & 138 S. 4th
2. Name of Business The Yard
3. Applicant's Name Jacob Wilson
4. Applicant Ph. 785-342-7545
5. Applicant's Address 210 E. Walnut
6. Email jacob@restorebuilds.com
7. Property Owner Name (if different) Restore Construction
8. Property Owner Address 210 E. Walnut
9. Owner Ph. 785-342-7545
9. Contractor/Architect Restore Construction
10. Phone
11. Contractor/Architect Address
12. Email jacob@restorebuilds.com

13. What kind of work is proposed? (please check all that apply)
☒ Renovation or repair ☒ Demolition ☒ Sign or Canopy ☐ New Construction ☐ Paint
☐ Other, please describe
14. Approximate cost of project (including labor and material) $ 250,000.00

Please attach the following materials to the application:

1. ***Please include Certificate of Compatibility Application Fee of $35.00 payable to the "City of Salina".***
2. Representative color photographs showing existing structure(s) and the location for the proposed work.
3. Small-scale projects must include a floor plan that shows the existing structure and location of the proposed work.
4. For larger or complex projects, provide architectural drawings such as site plan, floor plans, elevations, wall sections and/or detail drawings.
5. Material samples or product specifications indicating color, form, profile and texture.

Briefly describe the nature of the proposed work, the condition of existing materials, the replacement/new materials and/or the method of rehabilitation (attach additional sheets if necessary):
Renovation of 138 S. 4th for new business "The Yard". It will be a baseball & softball academy for youth kids. Demolition of metal building and construction of a new outdoor turf covered field. New siding & roof to corner building. New metal signage on 138 S. 4th.

Applicant Signature: Date 12/4/20

Property Owner Signature (if different): Date

For Staff Use: **Application No. #CC 20-14**
Legal Description of Property Lot 130, Lot 132, Lot 134, Lot 136 and Lot 138 on Fourth Street in the Original Town of Salina
Current Zoning C-4 Current Use Vacant contractor's office
Date Filed December 7, 2020 Accepted by DA
Date of Publication N/A Building/Sign Permit No.
Property Owner Notice Sent January 6, 2021 Heritage Commission Review (y/n)
Date of Hearing January 14, 2021 Approval Notification Sent

STAFF REPORT
BUSINESS IMPROVEMENT DISTRICT
DESIGN REVIEW BOARD

Application: **#CC20-14** Hearing Date: **January 14, 2021**

ITEM 3.1

Application #CC20-14, filed by Jacob Wilson on behalf of Restore Construction, LLC requesting the approval of a Certificate of Compatibility to allow the demolition and renovation of the existing buildings located at the northwest corner of Fourth Street and Walnut Street. The subject property is legally described as Lot 130, 132, 134, 136 and 138 on Fourth Street in the Original Town (now City) of Salina, Saline County, Kansas and addressed as 211 E. Walnut Street / 138 S. Fourth Street.

BACKGROUND

The existing buildings at the northwest corner of Fourth and Walnut Streets in downtown Salina addressed as 211 East Walnut Street were constructed in 1929 for a lumber yard operation. In the 1960s the buildings were occupied by a heating and air contractor and later briefly as a solar energy product facility. From 1987 to the present this property was used as a construction warehouse for Bill Medina Construction.

There is a separate brick building on the property that is part of a 3 bay building facing South Fourth Street. The north two bays of this building are being incorporated into the Car Museum. The southernmost bay was leased by Medina Construction to Images Recycling and later to Prairieland Market. Prairieland Market has relocated to the building at the northeast corner of Fourth and Walnut Streets. This building is separately addressed as 138 S. Fourth Street.

PROJECT PROPOSAL

Fourth and Walnut, LLC (Guy and Katie Gross and Jacob Wilson and Bob Moeller) has purchased the former Medina Construction property at the northwest corner of Fourth and Walnut with plans to convert the property into a baseball training facility to be known as "The Yard". They plan to demolish the one large, white Morton building in the center of the lot to allow room for a turf infield area with a steel structure above it with netting inside the complex. In the brick building on the far north end they plan to have indoor batting cages (five to seven cages), restrooms, a pro shop, and a storage room. The building on the southeast corner of the lot is proposed to be dedicated for indoor pitching with five (5) lanes. Their hope for this facility is to allow Salina and surrounding area youth baseball / softball teams to use this facility and practice year-round. The facility is proposed to be set up as membership-based with a foundation being created to assist youth that might not be able to afford the use of the facility.

Fourth and Walnut, LLC plans to do the work and open the facility in phases. The brick building on the north (Building A) that would house indoor batting cages, would be completed first. The pitching building on the southeast corner of the Lot (Building C)

would be completed second. The outdoor structure (Building B) and turf infield would be completed last.

This proposed project involves three (3) elements that require review and approval by the Design Review Board:

(1) Demolition of an existing warehouse building
(2) Modifications to the exterior of two existing buildings
(3) New infill construction between two buildings facing Fourth Street.

The applicant has submitted a site plan, floor plan, black and white elevation drawings and some color renderings but the elevation drawings are lacking detail about exterior façade materials and colors.

The project developers and their architect met with the City's Development Review Team (DRT) on **September 30, 2020** to go over their conceptual plans for the baseball training facility. Planning staff informed the owners and their architect that an indoor/outdoor recreational facility is not listed as a permitted use in the Central Business District and requested that they submit a detailed narrative explaining how the use would operate to allow the Zoning Administrator to make an Administrative Interpretation as to whether the operating characteristics of this facility would be sufficiently similar to a YMCA so as to make it a permitted use in the C-4 district. Planning staff also informed the project representatives that a Certificate of Compatibility would have to be applied for and approved by the Downtown Design Review Board prior to the demolition of any buildings and prior to the issuance of a building permit for work involving exterior modifications or new construction.

Work is underway on the site but no Certificates of Compatibility or building permits have been approved or issued by the City. A demolition permit was issued in error by Building Services staff in October without approval of a Certificate of Compatibility and the center warehouse building has been removed from the site. This error was made by staff and not the applicant or their contractor.

DESIGN GUIDELINES

The Design Review Board is authorized to grant a Certificate of Compatibility if, upon a vote of a majority of its members, the project is found to comply with the Policies and Guidelines contained in the Design Guidelines for Downtown Salina, 2008.

The Design Guidelines make the following recommendations in regard to Demolition:

6.2 Demolition should be considered if a building, object, or structure:

a) Does not contribute to the historical or architectural character of the District, and

b) Detracts from and does not have the potential to contribute to the importance of the District, and

c) Its removal and the proposed site restoration plan, including any plans for new construction on the site, will result in a more positive, appropriate visual effect on the District

The Design Guidelines make the following recommendations in regard to Alterations and New Construction.

In regard to Building Mass, Scale and Form: A building should appear similar in scale to traditional commercial facades.

A.1 Develop a primary façade that is in scale and aligns with surrounding traditional buildings.

A.4 A building should maintain the alignment of horizontal elements along the block.

Window sills, moldings, and cornices are among those elements that may be seen to align.

A.6 Rectangular forms should be dominant on commercial facades.

The façade should appear as predominantly flat, with any decorative elements and projecting or setback "articulations" appearing to be subordinate to the dominant form.

A.7 Use flat roof lines as the dominant roof form.

In regard to Architectural Character: New materials should be appropriate to the scale, durability, color and texture of the predominate materials in the area.

B.1 Building materials should be visually compatible with the predominate materials of the downtown area.

Buildings should be compatible with the surrounding traditional commercial context, however new buildings should not imitate older building styles.

B.2 Consider using storefronts, decorative surfaces or other features that provide visual interest to pedestrians. Avoid large expanses of featureless wall surface at the street level.

Express the traditional distinction in floor heights between street levels through detailing, material, and fenestrations. The presence of a belt course is an important feature.

B.4 Orient the primary entrance of a building toward the street.

A building should have a clearly defined primary entrance. For most buildings, this should be a recessed entryway.

The Design Guidelines make the following recommendations in regard to building additions: Minimize the visual aspects of an addition.

E.1 An addition should be compatible in scale, material and character with the main building.

An addition should relate to the building in mass, scale and form. It should be designed to remain subordinate to the main structure.

The Design Guidelines make the following recommendations in regard to color: Use colors to create a coordinated color scheme for a building.

C.1 Use color schemes that are simple.

The use of contrasting colors to highlight architectural details and upper facades is encouraged.

STAFF ANALYSIS

In September, a demolition permit for the white metal building in the center of the site was applied for by Diehl Enterprises on behalf of Restore Construction but no Certificate of Compatibility application was submitted for the demolition request. City staff erroneously issued a demolition permit to Diehl Enterprises on October 26, 2020 without DRB approval and the building has been removed from the site.

Section 2-207 of the Salina Business Improvement District Design Review Board reads as follows:

Sec. 2-207. – Certificate of compatibility.

a) No person shall perform or cause to be performed any work to:

(1) Construct; demolish; or change the existing exterior design, material, color, texture, finish, or appearance of **any building or any other improvement to real property in the Salina Business Improvement District Number 1;** or

(2) Introduce, change, substitute, or remove any physical feature affecting the appearance of real property in the Salina Business Improvement District Number 1;

without first applying for and obtaining a certificate of compatibility, subject only to the exclusions outlined in subsection (b).

b) A certificate of compatibility shall not be required:

(1) If the work includes only routine maintenance and results in no change to the existing design, material, color, texture, finish, or appearance of a building or other improvement to real property; or

(2) If circumstances warrant authorization of emergency repairs of a pre-approved nature and scope, in the sole discretion of the building official.

c) If the work requiring a certificate of compatibility requires any other type of permit, the permit shall not be issued unless a certificate of compatibility has been issued for the work.

Because no Certificate of Compatibility was approved, the October 26, 2020 demolition permit was not valid and the DRB needs to take action on this Certificate of Compatibility request to retroactively validate the permit.

In staff's opinion, this metal building met the criteria for demolition in the Downtown Design Guidelines. It was not a historically or architecturally significant building and its presence interfered with the owner's plans for redeveloping the project. However, it is ultimately up to the Board to decide whether the request to demolish this building was justified in this case and findings can be made to support its removal.

Proposed Replacement Construction

Fourth and Walnut, LLC is proposing to renovate the north building (Building A) and the south building (Building C) and to build a new metal structure between them (Building B) that would cover a turf practice infield. A building permit application and plans (site plan, floor plan and building elevations) have been submitted but the elevation drawings are lacking in detail.

Different drawings show different window sizes and styles and different exterior colors. None of the drawings clearly indicate what the exterior building material and roof materials would be, particularly on the south building which is already being renovated. The Board is supposed to review the applicant's plans to determine whether the proposed building design and materials will be compatible with the Fourth Street streetscape and the predominate building materials in the downtown area. In staff's view additional information is needed to make that determination.

Staff would request that the applicant and/or their architect provide additional information at the meeting about:

Building A – The proposed exterior building and roof material and whether the exterior color will be changed or continue to match the exterior masonry of the Car Museum to the north.

Building B – The proposed color of the metal roof and fencing.

Building C – The proposed exterior building and roof materials and the proposed exterior color of the building.

Some of the work that has occurred on this property has gotten ahead of the City's review processes. It is staff's hope that all proposed exterior improvements on this property that require review and action by the DRB can be addressed at the January 14, 2021 meeting.

Zoning Issues

The proposed baseball training facility is an indoor / outdoor recreation facility and is located on property that is part of the C-4 (Central Business) district. Neither indoor or outdoor recreation facilities are specifically listed as permitted uses in the C-4 district however, YMCA-type facilities are.

Section 42-302(79) of the C-4 district regulations lists YMCA, YWCA, and other similar organizations as a permitted use in the C-4 zoning district. Section 42-302(80) of the C-4 district regulations permits any use not specifically listed as a permitted use, if the Zoning Administrator determines under Section 42-596(a) that the characteristics or specific attributes of the use are sufficiently in common with a permitted use.

Like the Salina Fieldhouse project the Zoning Administrator has determined that the characteristics and attributes of this proposed baseball training facility are sufficiently in common with a YMCA, which would be a permitted use of the subject property. There fore this facility is permitted in the C-4 district.

Section 42-306(2) of the C-4 district use limitations states that *"All business, service, storage and display of goods shall be conducted within a completely enclosed building."* The Zoning Administrator has determined that the covered infield area is sufficiently enclosed by roof and fencing to conform with this requirement.

Addressing

The tax parcel / zoning lot at the northwest corner of Fourth and Walnut Street is currently addressed as 211 East Walnut Street. The brick building at the north edge of the property has had a separate address of 138 South Fourth Street. Because the proposed baseball training facility would have its main entrance facing Fourth Street,

the City's Fire Marshal is recommending that the current owners request an address assignment change from 211 East Walnut Street to a Fourth Street address.

Signage

Staff has identified only one proposed wall sign on the elevation drawings submitted with this Certificate of Compatibility application. If the Board wishes to approve the painted "THE YARD" wall sign as part of this application it needs to make sure it makes reference to the wall sign in any motion approving a Certificate of Compatibility.

SUGGESTED FINDINGS

Staff believes that the following potential findings may be incorporated to support the approval of the following project components:

Demolition Request

1. The existing metal warehouse structure because of its physical condition and location detracts from and does not contribute to the architectural character of the downtown area.

2. The removal of the existing structure and the proposed baseball training facility and associated parking lot will result in a more positive, appropriate visual effect on the Fourth Street corridor.

Proposed Exterior Modifications / New Construction

1. The building design and materials will be compatible with the predominate materials along Fourth Street of the downtown area.

2. The design of the building exterior will be compatible with the traditional commercial context while retaining a contemporary appearance that does not imitate an older building style.

3. The building will have a clearly defined primary entrance and street level entrances and features that will be pedestrian friendly.

4. Construction of a curb line and sidewalk would enhance the Fourth Street streetscape.

5. The satellite parking lot will contain landscape plantings and buffers that will reduce the impact of the lot on neighboring residential properties.

ALTERNATIVES – DEMOLITION REQUEST

Following any additional information presented at the meeting and discussion, the Design Review Board would appear to have the following options in consideration of this application:

Option 1 Retroactively approve a Certificate of Compatibility for the demolition of the metal structure based upon staff's suggested findings that the demolition conforms with the Design Guidelines for Downtown Salina.

Option 2 Approve the proposed demolition of the requested structure based upon staff's suggested findings subject to any conditions identified and approved by a majority of Design Review Board members.

Option 3 Postpone consideration of the application, in order to obtain additional information concerning the proposal. The date of the future meeting must be included in the motion.

Option 4 Deny the demolition request as presented, upon making findings that would support the denial of the request and provide further direction to the applicant and staff.

If the Design Review Board should deny the application or attach conditions not agreeable to the applicant, an appeal of that decision to the Salina City Commission may be filed with the Office of City Clerk within fourteen (14) days following the Design Review Board's decision.

STAFF RECOMMENDATION

Staff would recommend Option No. 1. Under this option, the Board would be authorizing the post-demolition issuance of the demolition permit for the identified metal structure.

ALTERNATIVES – EXTERIOR MODIFICATIONS

Following any additional information presented at the meeting and discussion, the Design Review Board would appear to have the following options in consideration of this application:

Option 1 Approve the Certificate of Compatibility for the proposed baseball training facility and accessory parking lot, including or excluding the proposed wall sign, based upon staff's suggested findings that the proposed new construction will conform to the Design Guidelines for Downtown Salina.

Option 2 Approve the Certificate of Compatibility for the proposed baseball training facility and accessory parking lot, based upon staff's suggested findings,

subject to any conditions or revisions to the plans identified and approved by a majority of Design Review Board members.

Option 3 Postpone consideration of the application in order to obtain additional design details and information about the proposed exterior changes. The date of the future meeting must be included in the motion.

Option 4 Deny the application as presented, upon making findings that would support the denial of the proposed project.

If the Design Review Board should deny the application or attach conditions not agreeable to the applicant, an appeal of that decision to the Salina City Commission may be filed with the Development Services Department within fourteen (14) days following the Design Review Board's decision.

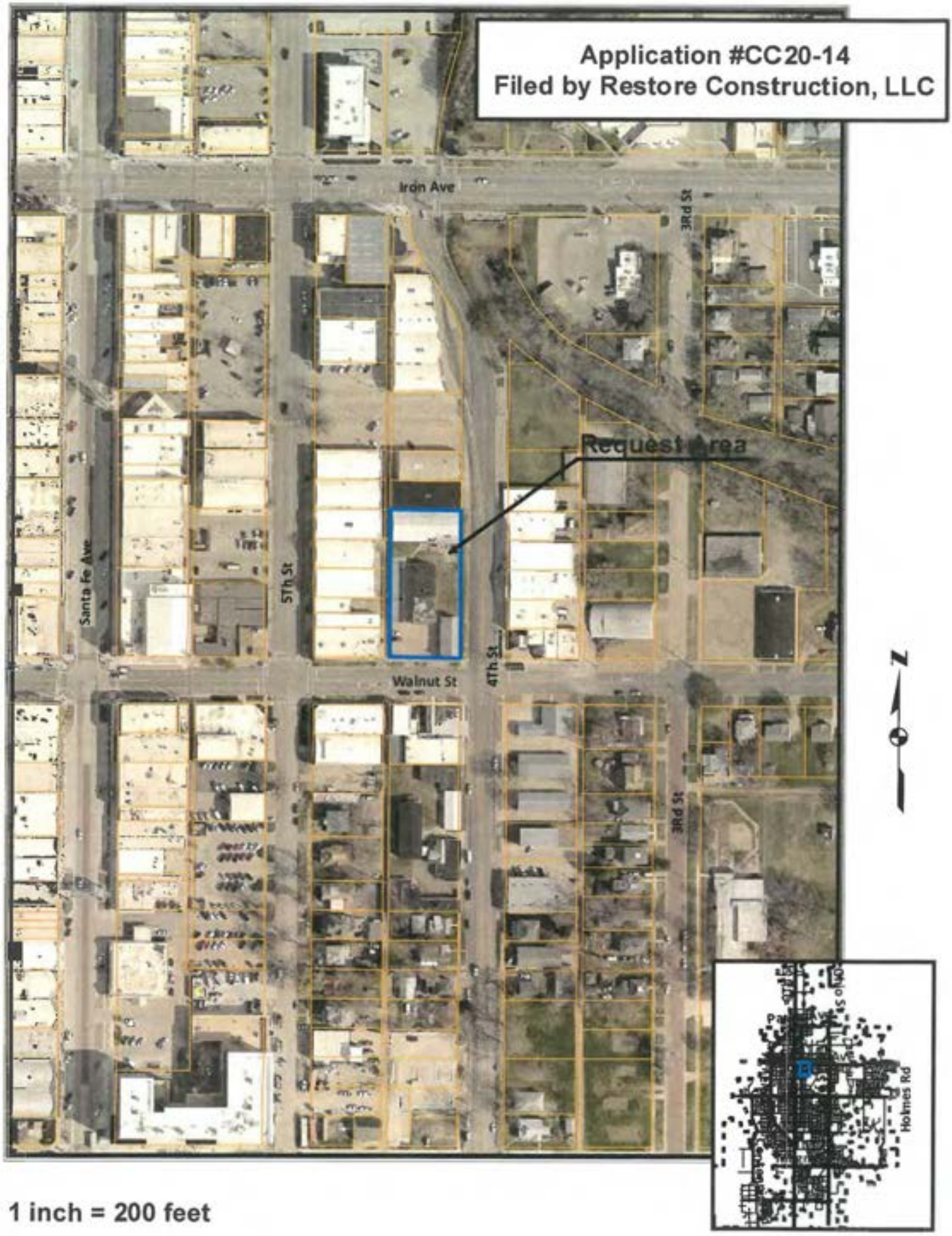
STAFF RECOMMENDATION

If the applicant and their architect provide the additional requested information to the satisfaction of the Board, staff would recommend Option No. 2. If no additional information is provided about exterior materials and colors, staff would recommend Option No. 3.

If the Board wishes to approve the proposed exterior improvements, staff would recommend that the Design Review Board attach the following conditions to their approval of the requested Certificate of Compatibility under Option No. 2.

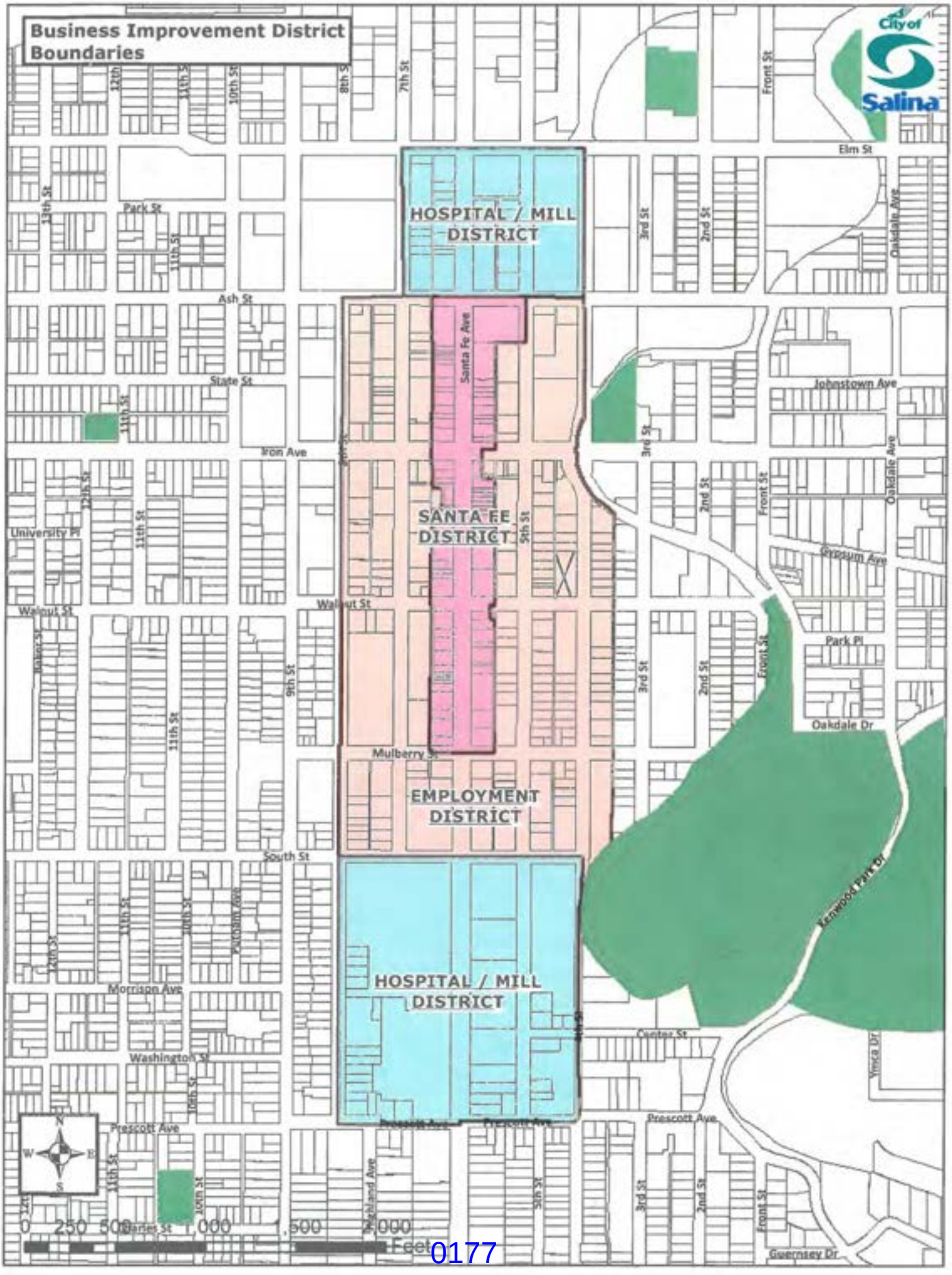
1. Development of the site shall substantially conform to the site plan, floor plans and exterior elevation drawings presented to and reviewed by the Board.

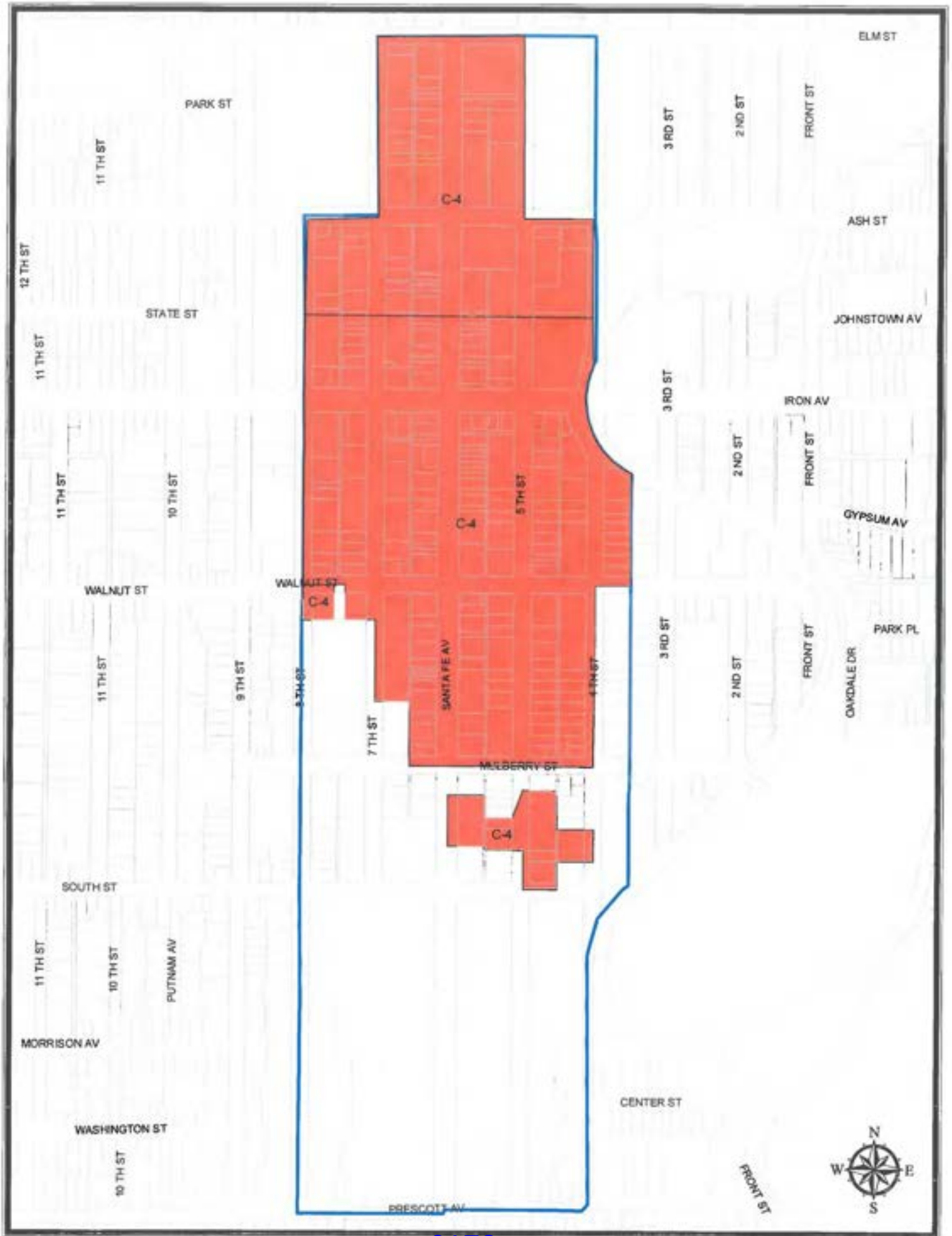
2. That if there are any significant changes to the project as approved, Development Services staff will be notified to determine whether additional staff or DRB review will be required.


Application #CC20-14
Filed by Restore Construction, LLC
Iron Ave
3Rd St
Request Area
Santa Fe Ave
5Th St
4Th St
Walnut St
3Rd St
N
Holmes Rd
1 inch = 200 feet

211 E. Walnut Street

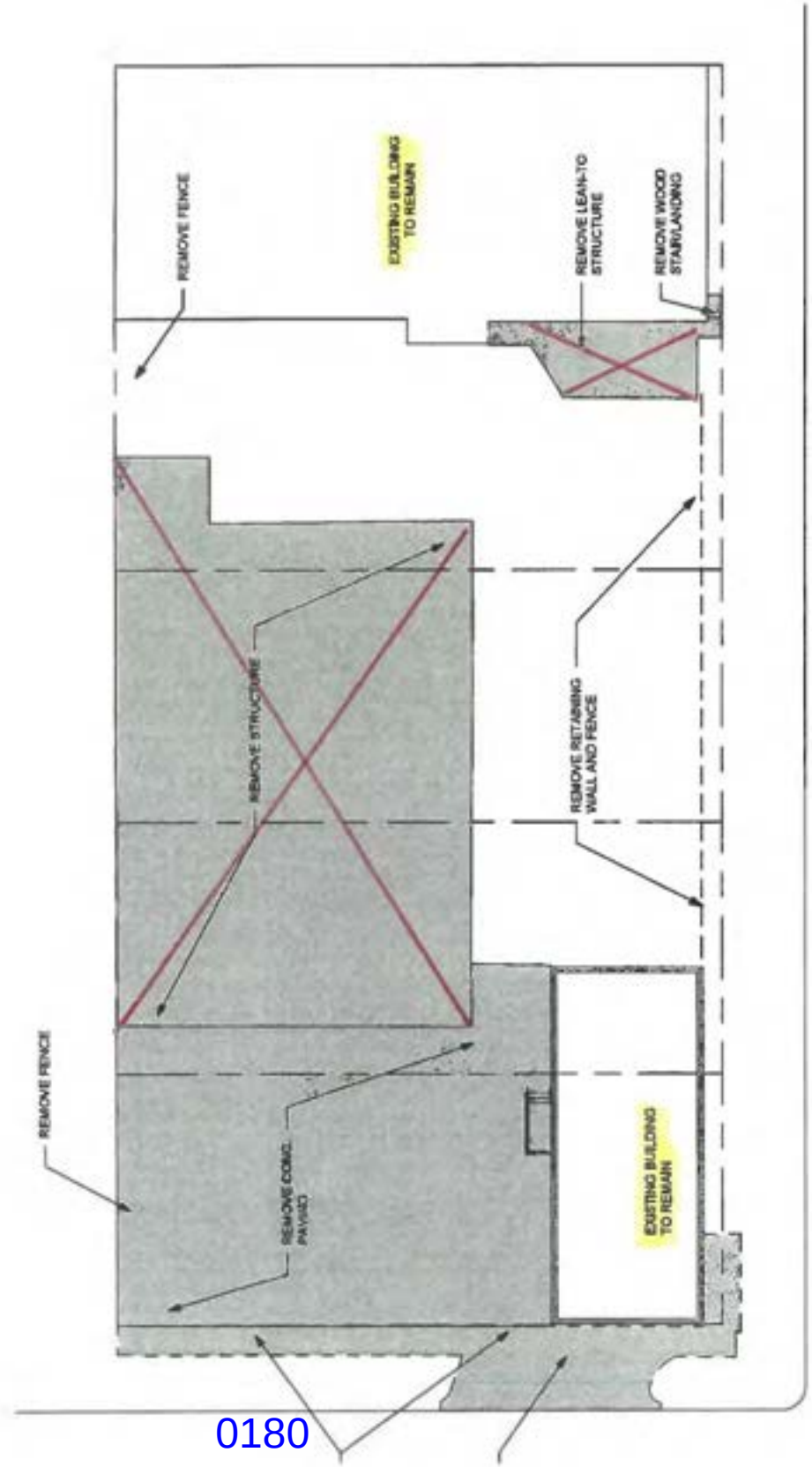



Business Improvement District Boundaries
City of Salina
HOSPITAL / MILL DISTRICT
SANTA FE DISTRICT
EMPLOYMENT DISTRICT
HOSPITAL / MILL DISTRICT
Elm St
Park St
Ash St
State St
Iron Ave
University Pl
Walnut St
Mulberry St
South St
Morrison Ave
Washington St
Prescott Ave
Johnstown Ave
Gypsum Ave
Park Pl
Oakdale Dr
Kenwood Park Dr
Custer St
Guernsey Dr
Front St
Oakdale Ave
Santa Fe Ave
Ohio St
Highland Ave
Marles St
0 250 500 1,000 1,500 2,000 Feet

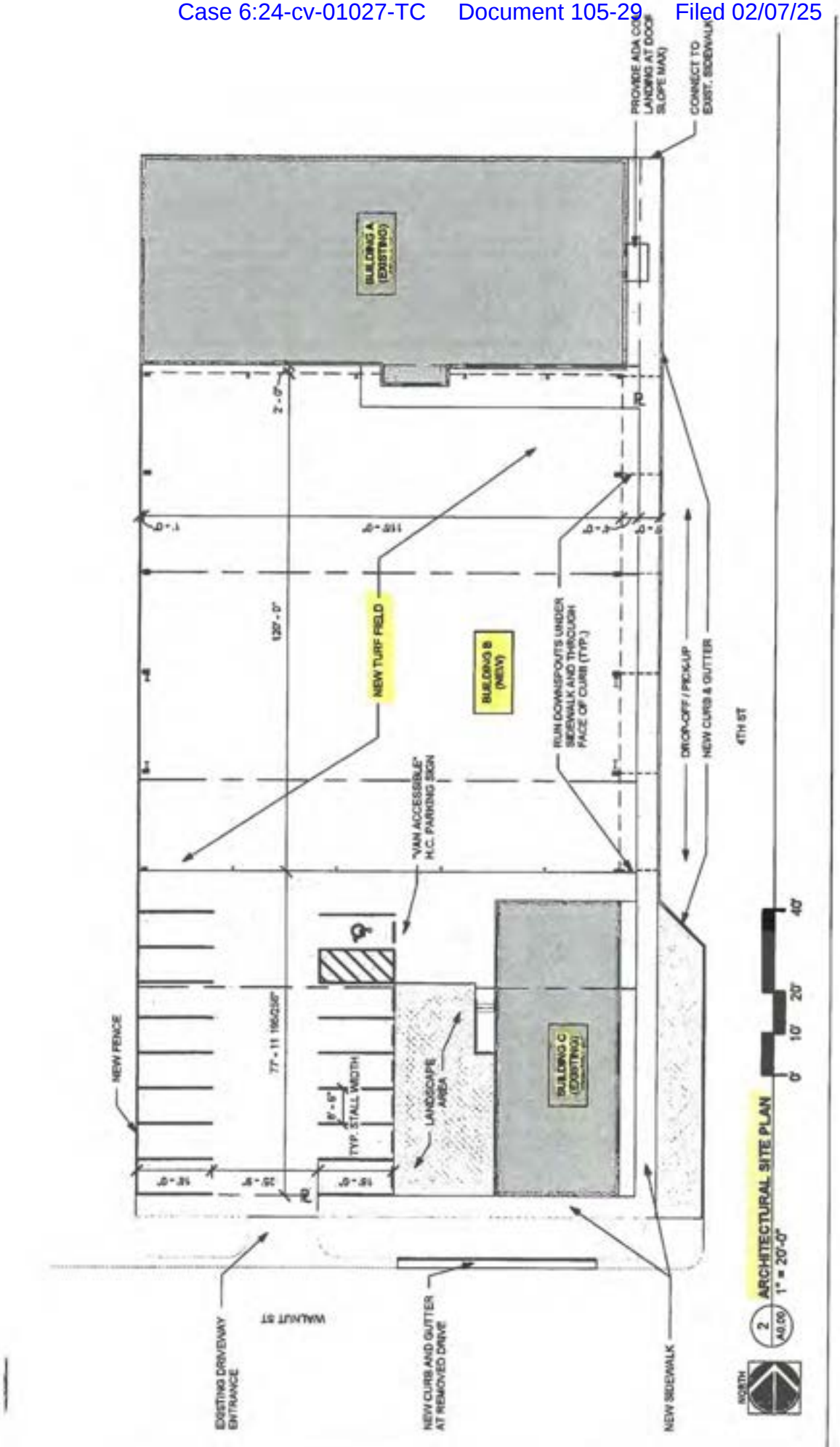

ELM ST
PARK ST
11 TH ST
12 TH ST
STATE ST
11 TH ST
11 TH ST
10 TH ST
WALNUT ST
11 TH ST
9 TH ST
SOUTH ST
11 TH ST
10 TH ST
PUTNAM AV
MORRISON AV
WASHINGTON ST
10 TH ST
3RD ST
2 ND ST
FRONT ST
ASH ST
JOHNSTOWN AV
IRON AV
GYPSUM AV
PARK PL
OAKDALE DR
5TH ST
4TH ST
7 TH ST
SANTA FE AV
MULBERRY ST
CENTER ST
PRESCOTT AV
C-4
N
W
E
S

Attachment

Project Site Plan



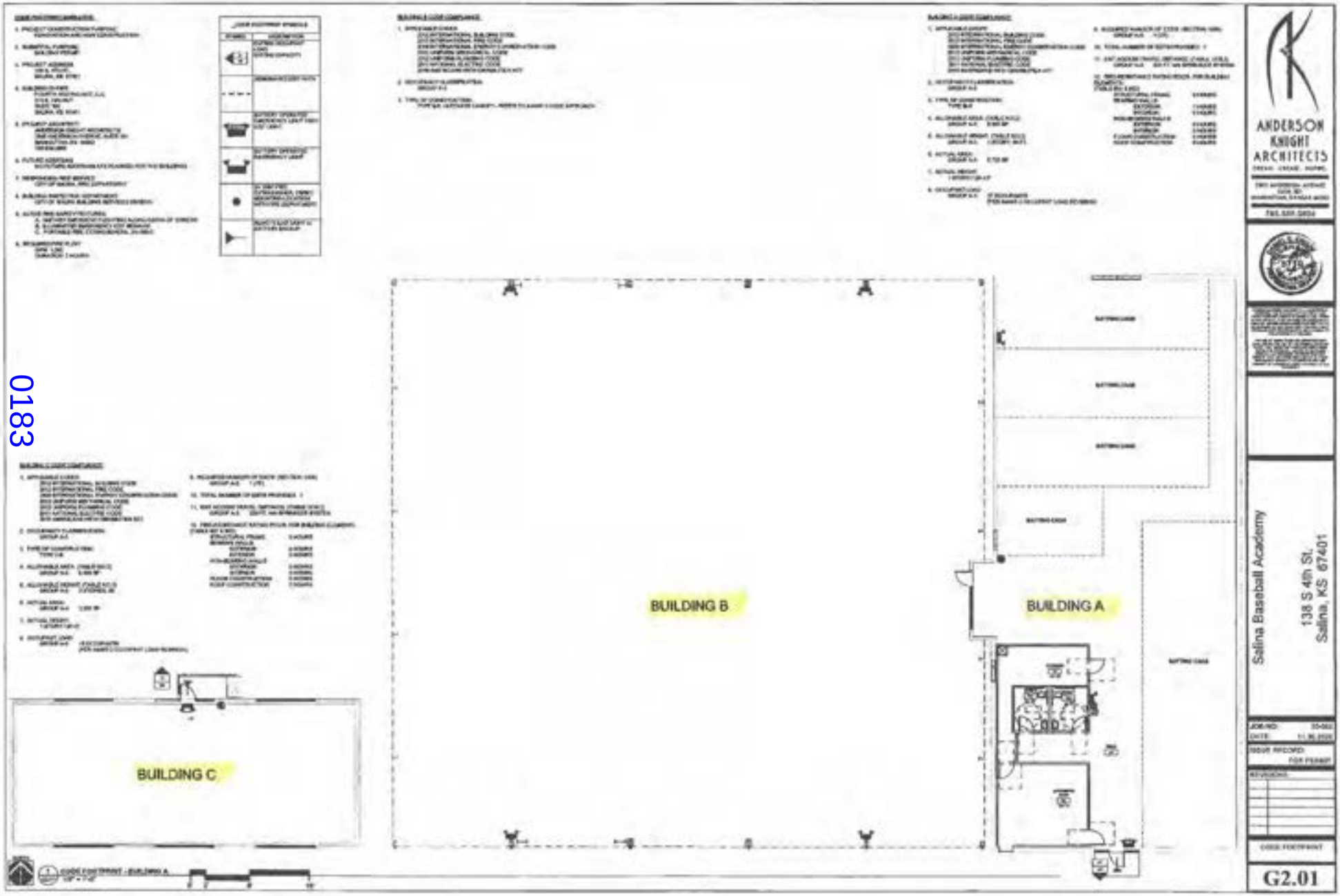
ARCHITECTURAL DEMOLITION SITE PLAN
1" = 20'-0"



2 ARCHITECTURAL SITE PLAN
A0.05 1" = 20'-0"

Attachment

Floor Plan



0183

Case 6:24-cv-01027-TC Document 105-29 Filed 02/07/25 Page 28 of 55

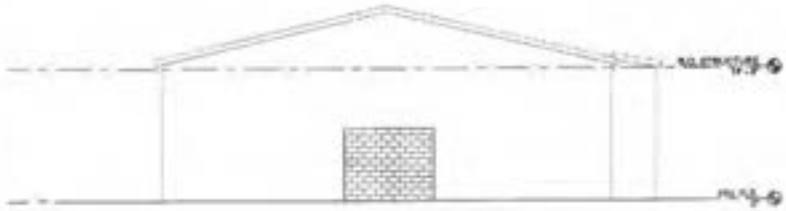
Attachment

Proposed

Building Elevations



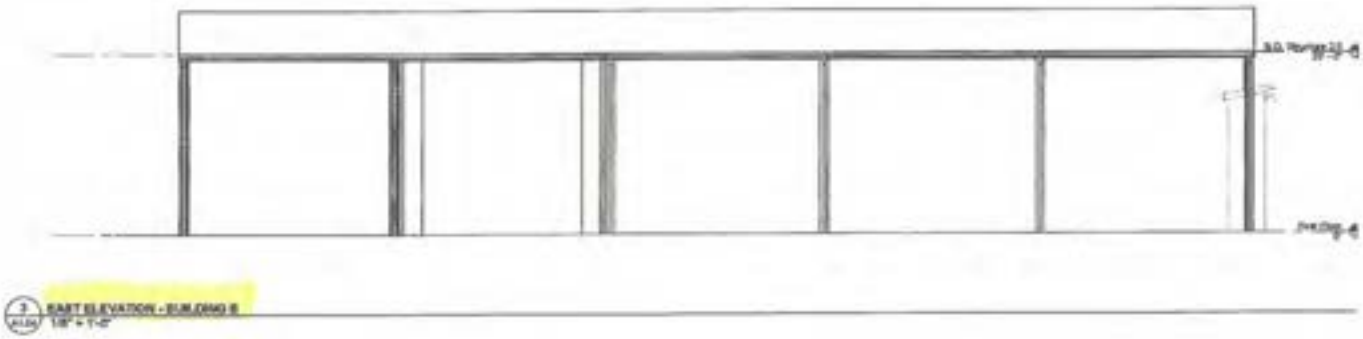
1 EAST ELEVATION - BUILDING A
1/8" = 1'-0"



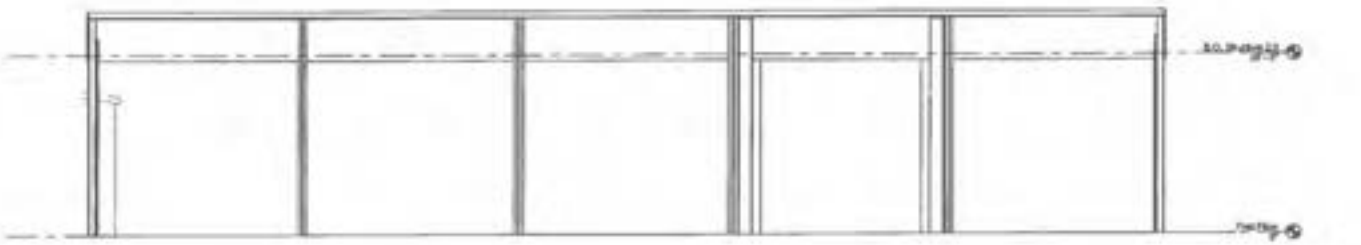
4 WEST ELEVATION - BUILDING A
1/8" = 1'-0"



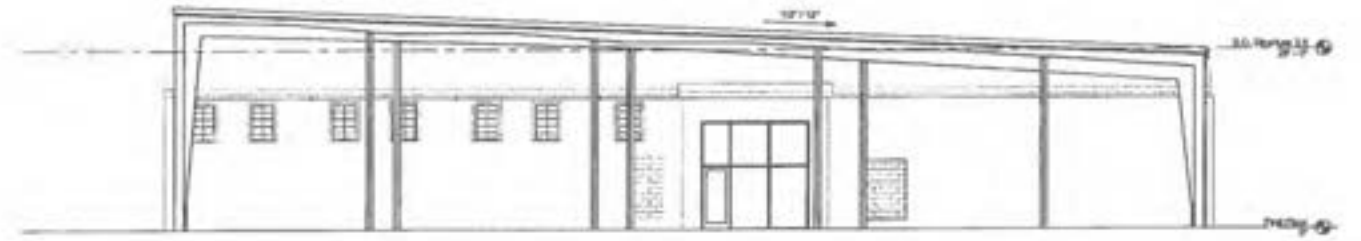
3 SOUTH ELEVATION - BUILDING A
1/8" = 1'-0"



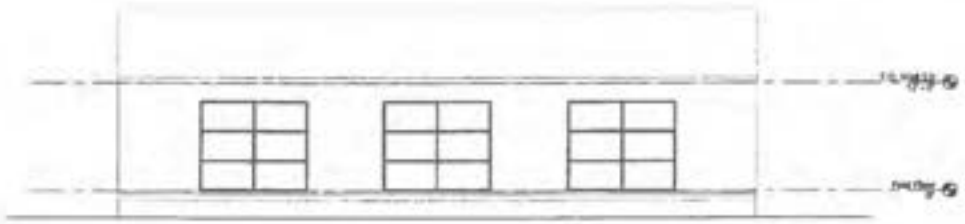
3 EAST ELEVATION - BUILDING B
1/8" = 1'-0"



4 WEST ELEVATION - BUILDING B
1/8" = 1'-0"



1 SOUTH ELEVATION - BUILDING B
1/8" = 1'-0"

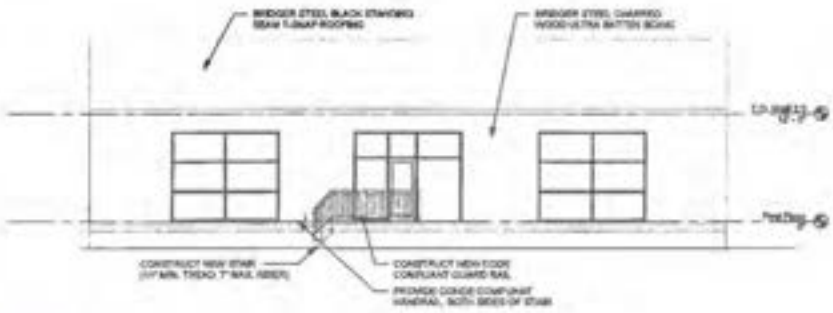


1 ELEVATION - EAST
1/8" = 1'-0"

BUILDING C



2 ELEVATION - SOUTH
1/8" = 1'-0"



3 ELEVATION - WEST
1/8" = 1'-0"


MAMMOTH

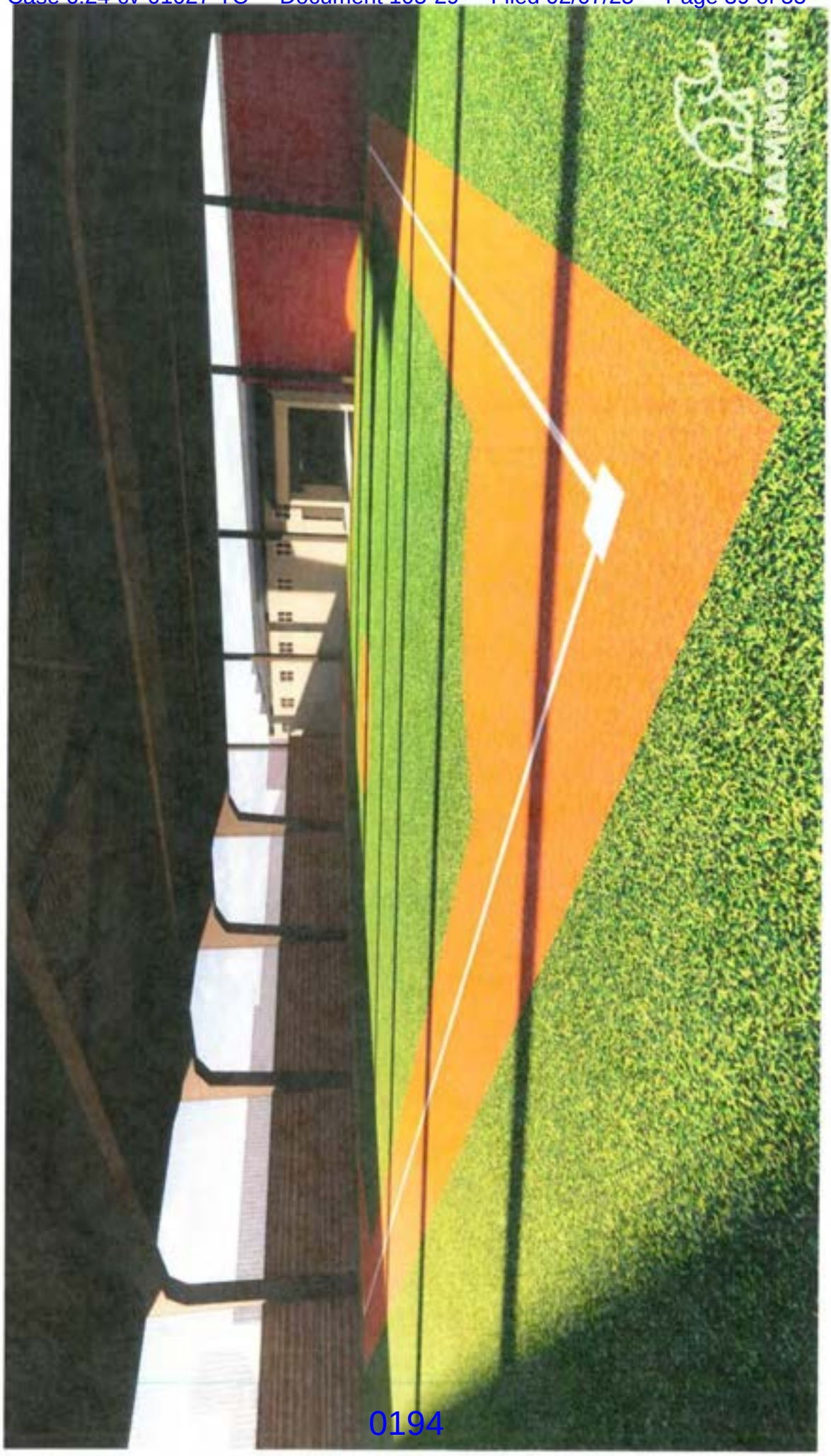
THE YARD

Attachment

Street Views


MAMMOTH

THE YARD


MAMMOTH

Attachment

Demolition
Design Guidelines

Chapter 6. Guidelines for Demolition

Essential Principles

Demolition is defined as the complete or partial tearing down or removal of a building, object, or structure from the Lee District.

Generally, the demolition of a building, which contributes historically or architecturally to the character and significance of the district is unsuitable and should be avoided.

Should the Design Review Board deem a proposed demolition appropriate, such demolition should proceed only when an immediate reuse is planned for the property, unless it has been considered a safety hazard. The proposed design of new construction should be submitted to, and reviewed by, the DRB in conjunction with the submission and review of the proposed demolition.

Guidelines for Proposed Demolition

Demolition should only be considered under any of the following conditions:

1. If the City Building Official has ordered demolition for the public safety because of an unsafe or dangerous condition which constitutes an emergency;

2. If a building, object, or structure: a) does not contribute to the historical or architectural character and b) detracts from and does not have the potential to contribute to the importance of the District and c) its removal and the proposed new construction will result in a more positive, appropriate visual effect on the District.

Demolition should not be considered under any of the following conditions:

1. If a building, object, or structure is of such architectural or historical significance that its removal would be detrimental to the public interest and the objectives of the District;

2. If a building, object, or structure is of such architectural or historic character that it could not be reproduced without great difficulty and expense

3. If its proposed reuse, or new construction would make a less positive visual contribution to the District, would disrupt the character of the District, or would be visually incompatible; or

4. If the demolition of a building, object, or structure would negatively impact the character, streetscape, or other buildings, objects, or structures in the District.

Attachment

Façade
Design Guidelines

Chapter 4. Alterations and New Construction

While the Lee District has historic character, it is also a dynamic neighborhood in which existing buildings are altered and new buildings are constructed. Infill construction is encouraged on open lots in the District.

The design of a new building should not necessarily imitate historic buildings, but should be compatible with them. Creativity in design is especially encouraged when it also is compatible with the design objectives of the downtown.

New buildings should reinforce the basic character-defining features of the district. Such features include the way in which a building is located on its site, the manner in which it faces the street, its materials and the general alignment of architectural elements and details along a block. Arranging these design variables to be similar to those in the area creates visual compatibility.

The principal façade (front) and street related elevations of proposed new buildings will be more carefully reviewed than other facades. New construction facades should be consistent with the existing District buildings in terms of height, scale, rhythm, and other design characteristics.

New construction should not appear old. The intent of Lee district is not to "freeze" an area in time, but rather to encourage new buildings which fit contextually within the district. New construction should not attempt to replicate the old or to introduce a false "historic" appearance. For most new construction projects, the best approach is to **HARMONIZE** with and reinforce the context of existing buildings. The purpose of the design guidelines is to encourage new buildings that complement the best of the existing environment.

The dominant character should be pedestrian-friendly with an active street edge. New buildings should include the following key design aspects to help maintain that established District character:

- Buildings aligned at the sidewalk edge;
- Two-story traditional commercial buildings (some buildings reach greater heights);
- Masonry construction dominates;
- Transparent ground floor with smaller windows into predominantly solid upper floors;
- Flat-roof (low slope) buildings;
- Additions are compatible in size, form, materials, and design;
- Maintain traditional mass, size, form, and building materials;
- To design commercial buildings with storefront elements similar to those seen traditionally (e.g., recessed entry, display windows, bulkhead, transom windows, storefront cornices, upper cornices, and vertically oriented upper-story windows)
- To promote friendly, walkable streets.



Building materials should be compatible with materials of exiting buildings.

Policy: A building should appear similar in scale to traditional commercial buildings

A. Building Mass, Scale and Form

Building heights generally vary in the Lee District from one to four stories, yet there is a strong sense of similarity in scale. A variety in building heights is appropriate; however, the dominant scale of two stories should be maintained. New construction should blend in the streetscape and not stand out. Buildings used as infill should be similar in height to adjacent buildings, and of a height of no more than 15 feet higher than the tallest adjacent building, and should not overpower the character of the District. The infill buildings should line up with existing setbacks, reinforce the established horizontal lines of the elevations, and maintain the rhythm in the single lot widths of new buildings.

1. **Maintain the established building scale in height.**

- Develop a primary façade that is in scale and aligns with surrounding traditional buildings.
- Consider stepping the mass of a tall building down to a lower height as it approaches surrounding buildings.

2. **Buildings should appear similar in width to those historically in the block.**

- Facades of large buildings should reflect the 25 ft. storefront bays to be in scale to traditional buildings.
- When a larger building is divided into bays, these should be expressed three-dimensionally throughout the entire building façade.

3. **Floor-to-floor heights should appear to be similar to those seen in adjacent buildings.**

- In particular, those windows in a building should appear similar in height to those seen in adjacent buildings.

4. **A building should maintain the alignment of horizontal elements along the block.**

- This alignment occurs because many of the buildings are similar in height.
- Window sills, moldings, and cornices are among those elements that may be seen to align.

5. **Where appropriate, consider dividing larger buildings into bays that are similar in scale to buildings seen historically.**

- If a larger building is divided into bays these should be expressed three dimensionally, throughout the entire building.
- When considering a tall structure, the alignment of building elements is particularly important. Although a new building may tower above the surrounding buildings, the first stories should visually relate to the surrounding historic context.

One of the most prominent unifying elements of a downtown district is the similarity in building form. Commercial buildings are simple rectangular solids, deeper than they are wide. This characteristic is important and should be continued.

6. **Rectangular forms should be dominant on commercial facades.**

- Rectangular forms should be vertically oriented.
- The façade should appear as predominantly flat, with any decorative elements and projecting or setback "articulations" appearing to be subordinate to the dominant form.

7. **Use flat roof lines as the dominant roof form.**

- Parapets of side facades should step down towards the rear of the building.

Policy: Building materials should be visually compatible with the predominate materials of the downtown area

B. Architectural Character

New materials should be appropriate to the scale, durability, color, and texture of the predominate materials in the area.

1. Material should appear similar to those used traditionally.

- Brick was the traditional material and is preferred.
- Wood and metal were used for windows, door and storefront surrounds and should be continued.
- New materials will be considered on a case-by-case basis. If used, they should appear similar to those used traditionally and should be detailed to provide human scale.
- New materials should have a demonstrated durability. Some new materials are susceptible to weather and do not last as long as brick.
- Existing metal should be maintained. If it needs to be stripped, use a chemical paint designed for that purpose, not dry grit blasting.
- Preserve cast iron by maintaining and restoring original cast iron columns and pilasters. Do not conceal or obscure original cast iron columns or pilasters.
- When it is necessary to replace brick, it should match in color and size to the original, if at all possible.
- Unless necessary to protect the surface, masonry should be left unpainted.
- Previously painted surfaces should be repainted rather than chemically cleaned. Repoint mortar, if necessary, before painting brick.
- Sometimes missing details and appropriate materials can be recreated with a one-dimensional paint scheme.
- Brick and other masonry should not be coated with silicone-based water sealants. Water sealants or water repellents generally have the effect of keeping interior moisture from evaporating through the walls and thereby damaging the brick and mortar.
- Masonry should not be covered with stucco, wood siding, aluminum or other artificial materials.

It is important that buildings be compatible with the surrounding traditional commercial context, however new buildings should not imitate older building styles.

2. Maintain the distinction between the street level and upper floors.

- The first floor of the primary façade should be predominantly transparent glass, not tinted.
- A minimum of sixty-five percent of a street level façade of all buildings (except civic and institutional) should be windows, doors, display areas, or similar architectural features.
- Consider using storefronts, decorative surfaces or other features that provide visual interest to pedestrians. Avoid large expanses of featureless wall surface at the street level. These will discourage pedestrian activity in the District.
- Upper floors should be perceived as more opaque than the lower floors.
- Express the traditional distinction in floor heights between street levels through detailing, material, and fenestrations. The presence of a belt course is an important feature.

3. Upper-story windows with vertical emphasis are encouraged.

- A typical, upper-story window is twice as tall as it is wide. Upper story windows should relate to historic window proportions.
- Windows, lintels, and their trim elements should align with those on adjacent historic buildings.

Policy: Building materials should be visually compatible with the predominate materials of the downtown area (continued)

4. Orient the primary entrance of a building toward the street.

- A building should have a clearly defined primary entrance. For most commercial buildings, this should be a recessed entryway.
- Original entrances should be maintained, restored, or replaced (do not enclose, cover, or alter) including the design, material, depth, and placement.
- Aluminum replacement doors and storefronts should be made compatible by painting a dark color.
- Do not use doors decorated with molding, cross bucks, or window grills. Do not use solid wood doors in storefronts, unless original.
- If original design of a door is unknown, replace with a plain wood door with plain glazing (glass area), as opposed to solid wood doors, decorative doors, or any kind of period reproduction door.
- New entrance openings should not be added to storefronts. If an additional entrance is required by codes, place it on the rear or side façade and not on the main façade.
- Doors added to storefronts should be replaced with doors to match the original in design and materials.

5. Maintain all aspects of the storefront (including doors, windows, and details) when possible.

- Preserve existing original storefronts elements (windows, transoms, lintels, sills, hoods, bulkheads, cornices, and parapets) by maintaining or restoring, do not remove or alter. It is better to repair than replace deteriorated storefront features. Covering or removing significant elements such as transoms, panels below store windows, or original doors results in a substantial loss of historic character.
- Use a traditional storefront arrangement with features, materials, and proportions typical of similar structures of the same (not earlier or later) architectural style or period when the original design and features can not be determined. Storefront material should be simple.
- Do not allow storefront design to stray out of its natural place within the façade. Generally, there should be more glass and fewer walls at the storefront level, balanced by more walls and less glass on the upper façade.
- Display windows which are new, should match the original in location, design, size, configuration, and materials.
- Display windows which are missing and the original design is unknown, should be replaced with traditionally scaled windows. Traditionally scaled windows have large glass lights and few structural divisions to maintain a traditional transparent storefront appearance. If aluminum frame windows are used, utilize dark anodized or baked enamel finishes.
- When replacing missing or damaged features and based on historic evidence such as photographs or "ghosts" marking or cornice locations or through newspaper or photographic research, base new building features from a similar building of the same design, use simple (but to scale) decoration.
- Windows which are not original should not be added.
- Windows should be repaired rather than replaced, but if replacement is necessary the replacement windows should fill the entire original opening and duplicate the original pattern, including dimensions, number and arrangements of lights in each sash, materials, and detailing. If aluminum framed windows are used, use dark anodized or baked enamel finishes.

Policy: Building materials should be visually compatible with the predominate materials of the downtown area (continued)

- Storm windows should be painted to match the color of the window sash and window shape should be duplicated. It may be desirable, on the front of building, to install storm windows inside where they will not be seen. Storm windows use full view or sash proportionate, blind stop type of wood or aluminum with anodized or baked-on enamel finish.
- New display windows should match the original in location, design, size, configuration and materials.
- New windows should not have snapon or flush muntins. True divided muntins are preferred over these types of muntins. Properly sized muntins permanently attached to windows are acceptable.
- Decorative glass windows which are original should be preserved in their original location, size, and design and with their original materials and glass pattern.
- On the interior, should the building's ceiling interfere with the transom space, recess ceiling space slightly away from the transom, or paint rear (interior) of the transom black.
- Windows can not be blocked or filled in.

6. Roofs, Cornices, & Gutters

Roofs should be retained in their original shape and pitch, with original features, and, if possible, with original roof materials.

- New roofs covered with modern rolled composition, asphalt materials, or rubber membrane are appropriate. The installation of a higher pitched roof to improve water runoff is acceptable as long as the new roof is not visible on the primary elevation and is constructed below the roof parapet wall.
- Do not use mansard roof with wooden shingles.
- Metal flashing should be used with new roof materials extending along the brick walls to protect against leaks.
- Buildings with flat roofs should have cornices or decorative bands to "cap" the façade.
- Replacement gutters and downspouts should not result in the removal of significant architectural features on the building.
- Gutters and downspouts either of boxed or built-in type should be repaired rather than replaced if possible.

7. Foundations

- Preserve (maintain or restore, not enclose or alter) original foundation materials and design -- whether solid or pier, brick, stucco or stone, etc.
- Foundations should not be concealed with concrete block, plywood panels, corrugated metal, or other non-original materials.

Policy: The street level of a building should be pedestrian friendly.

The Lee District should continue to develop as a pedestrian-oriented environment. Streets, sidewalks, and alleys should encourage walking, sitting and other outdoor activities. Buildings also should be visually interesting to invite exploration by pedestrians.

Existing pedestrian routes should be enhanced. A building should express human scale through material and forms that were used traditionally. This is important because buildings are experienced at close proximity by the pedestrian.

8. Develop the ground floor level to encourage pedestrian activity.

- A storefront should be used on the primary façade of a building.
- On a secondary facades, alternative methods of creating pedestrian interest should be utilized. Consider the following:
  - ◊A storefront
  - ◊Display case
  - ◊Public art
  - ◊Landscaping
  - ◊Decorative wall surfaces.
- Include traditional elements such as display windows, bulkheads and transoms on commercial storefront.
- Avoid a blank wall or vacant lot appearance.



Storefront has been redeveloped and is pedestrian friendly.

Policy: Minimize the visual impact of balconies and roof decks as seen from the street.

Roof gardens, decks, and accessory structures can visually impact the design integrity of the building on which they are located, their visual impacts should be minimized.

9. Set activities back such that they are not visible from the sidewalk across the street.

- This includes potted plants, umbrellas, and tables.
- Roof terrace railings and furniture should be placed well behind the parapet.

10. Avoid clutter on roofs that will be visible from the public's view.

- Mechanical equipment shall not be visible from the public's view.

11. A roof garden, deck, or accessory structure should be compatible with the building on which it is located.

- This includes design, materials, scale, proportion, and color.
- A roof garden, deck, or accessory structure should not damage, destroy, or overshadow the character-defining features of the building on which it is located.

Policy: Use colors to create a coordinated color scheme for a building.

C. Color

Downtown buildings contain a variety of colors in elements such as upper facades, storefronts, sign, and awnings. The introduction and use of colors should not restricted but it is encouraged that colors complement each building and its neighbors. There is **not** a specific color pallet for the Lee District.

A. The façade should "read" as a single composition.

- Paint colors on storefronts, trim, and upper-story openings should be related to the overall color of the building as should added elements such as signs and awnings.
- In many cases these will be colors that complement or harmonize with the overall brick colors found on upper facades.

B. Use color schemes that are simple.

- Using one base color for the building is preferred.
- Using only one or two accent colors is also encouraged, although precedent does exist for using more than two colors in some situations.
- The use of contrasting colors to highlight architectural details or storefronts and upper facades is encouraged.

Policy: Maintain the line of building fronts in the block.

D. Site Planning

Structures in the Lee District should contribute to a "strong wall" along the street. A new building should align at the front lot line and be built out to the full width of the parcel, to the side lot lines.

1. Maintain or enhance the alignment of buildings at the sidewalk edge.

- Locate the front building wall at the sidewalk line when feasible.
- Where a building does set back from the sidewalk, use landscape elements to define the sidewalk edge.

2. Orient the primary entrance of a building toward the street.

- A building should have a clearly defined primary entrance. For most commercial buildings, this should be recessed entryway.
- A secondary public entrance to commercial spaces is also encouraged on a large building.

3. Rear entrances and side elevations.

- Preserve original windows, doors, and architectural detailing on rear and side elevations.
- Rear and side entrances can be enhanced by adding simple signage, awnings, and lighting that is related to those of the front elevation.
- New windows and doors may be added when needed if in keeping with the size, design, materials, proportions, and location of the originals. Follow guidelines for windows and doors for new openings on the rear and side elevations.
- Locate any necessary exterior staircases, balconies, elevator shafts, and additions on rear elevations, whenever possible.



Maintain the alignment of buildings at the sidewalk edge.

Policy: Minimize the visual aspects of an addition.

E. Additions

There are three different types of additions that may be constructed. The ground-level addition is the first way to do an addition that involves expanding the footprint of the structure. This addition should be to the rear or side of a building where it will have the least impact on the character of a building.

The next option of constructing an addition is to the roof that can be simple and set back from the front of the building. Materials, window sizes, and alignment of trim elements on the addition should be compatible to those of the existing structure.

The third option is to design an addition within the wall plane of the existing building, which should be considered on a case-by-case basis. This is difficult and requires care to respect the relationship of the building to the street. Such an addition should provide a visual distinction between the existing building and its addition which can be done with the use of a storefront cornice element or a subtle change in building materials.

1. **An addition should be compatible in scale, material, and character with the main building.**

- An addition should relate to the building in mass, scale, and form. It should be designed to remain subordinate to the main structure.
- An addition to the front of a building is inappropriate.

2. **An addition may be made to the roof of a building if it does the following:**

- An addition should be set back from the primary façade, to preserve the perception of the historic scale of the building.
- Its design should be modest in character, so it will not attract attention from the historic façade.
- The addition should be distinguished as new, albeit in a subtle way.

3. **In limited circumstances, an addition may be made to the roof of a building and not be set back from character-defining facades, if it does the following:**

- An addition should be distinguished from the existing building. A change in material or a decorative band can be considered to accomplish this.
- An addition should maintain the alignment of storefront elements, molding, cornices, and upper-story windows that exist on the main part of the building.
- The addition should also be compatible in scale, texture, and materials with the original.

4. **An addition should not damage or obscure architecturally important features.**

- Loss or alteration of a cornice line should be avoided, for example.
- Additions should respond architecturally to adjacent buildings in general and to the building they are a part of in particular. They should blend in by using similar materials, shape, and rhythm and proportion of openings.
- If the original building is architecturally significant, the addition should take a respectful "back seat". The addition should not overpower the original. An addition may be taller than the original building if site consideration and design still allow the old building to remain dominant.
- In general, additions should follow the basic guidelines for new construction. They should appear contemporary but in context with the original. They addition should be sympathetic but not imitative in design.

Attachment

Newspaper
Article

SALINA JOURNAL

Holm Auto Good News: Championships are won at practice

By Randy Mathews, Special to The Salina Journal
Posted Nov 24, 2020 at 11:01 AM

For Salina dentist Guy Gross, the creation of a baseball and softball training facility has become a personal mission, as well as one more exciting project in the ongoing transformation of downtown Salina.

"This is something that I've seen as a need in our community for a long time," Gross said. "I've been coaching baseball and raising kids and seeing that there is just not a great place to go practice, especially in the winter."

Gross said The Salina Fieldhouse, a multipurpose recreational center that opened at 140 N. Fifth in 2017, is a great facility, but it isn't always set up for baseball or softball, as it is sometimes configured for basketball or volleyball courts instead.

Other area coaches share his concern about the need for a dedicated training facility. They believe not having one available puts local and area baseball and softball players at a distinct disadvantage, not only in developing their individual skills, but also when trying to compete in tournaments in other cities where teams have better access to such facilities.

"We'd go around the state or to other parts of the country and we'd compete against these teams from communities where they already have academies and facilities where kids are able to prepare and compete year-round, and we found that we have some awesome players from Salina but we weren't able to keep developing them as much as these other academies were," Gross said. "Sometimes we could see that we were falling behind because our kids may not be getting as much exposure or opportunities for scholarships."

So Gross and his wife and fellow dentist Kate Gross decided to build The Yard, a state-of-the-art, 20,000-square-foot baseball and softball training complex currently under construction at 158 S. Fourth, just south of where the American Classics Auto Museum will be located.

"We wanted to create a top-notch place for baseball and softball training that could happen year-round," Gross said. "If there are kids in our community who want to become great ballplayers and potentially have a shot at going on to college or beyond to play, we wanted them to have all the resources around them to be able to do so."

Under the umbrella of the Salina Baseball Academy, the concept for The Yard quickly took shape. Encompassing three separate but interconnected facilities, the complex will provide a wide range of training opportunities utilizing the latest in sports technology.

Two existing brick buildings — one at the northwest corner of Fourth and Walnut and the other about mid-block to the north — are being extensively renovated and will house a regulation pitching "bull pen" and batting cages, respectively. In between, in a space formerly occupied by an office building/warehouse and parking lot, a 115-foot by 120-foot outdoor turf infield will meet both high school and collegiate specifications. The covered infield will feature a tall roof structure and will be sloped and netted. Lighting will make it possible to use the infield after dark and portable heaters will allow for limited wintertime use.

Gross expects the two indoor facilities to be opened by the end of December. The outdoor infield should follow later in the winter or early spring. Architectural and engineering work is nearly completed, and groundbreaking is set to begin soon. The Salina Baseball Academy and Restore Properties are partners on the property acquisition and Restore's Jake Wilson and Gross are co-managing the project. Restore is handling most of the contracting work.

Meanwhile work is already well underway on the buildings housing the pitching and batting facilities. The Yard's head coach and director of operations Brian Guyett provided an overview of the planned set-up during a recent tour. Guyett, a native of Anaheim, Calif., came to Kansas by way of the Seattle area to play baseball at Bethany College, where he was a starting pitcher. He said for him, The Yard is like a dream that is coming true. He will oversee a team of local and area baseball and softball youth to manage The Yard, staff its operation and maintain the facility.

Guyett said the pitching "bullpen" in the south building will feature five lanes of pitching mounds set up across the north side. Pitching will be from north to south. Pitchers can bring their own catchers but that isn't necessary for bullpen sessions, as there will be targets to aim at. Windows will provide natural light and the space will be turfed, so the pitching mounds can be lifted to allow for ground ball practice. Nets will be installed but will not extend all the way around, so batting practice is not permitted in that building.

Batting will be the focus of the second building further north. Guyett said the space can be configured for up to eight batting cages, in a variety of sizes. Nets are mounted to tracks in the ceiling, allowing them to be opened to create a 50-foot by 50-foot square for ground ball practice.

Both Gross and Guyett are excited about the high-tech amenities that the pitching and batting facilities will offer.

In the pitching bullpen, a camera and sensor-based system called Rapsodo will provide pitchers with a variety of metrics, including spin ratio and miles per hour. A screen at the opposite end will display ball movement, showing where a pitch starts its trajectory and where it ends.

In the batting cage building, a similar system called HitTrax can be custom-set to match the layout of any stadium, even those that are home to Major League Baseball teams. Two HitTrax systems will be available for use.

Four batting cages will also have a Hack Attack pitching machine that can be set to accurately throw curveballs, sliders, knuckleballs or fastballs so batters can become more adept at hitting different kinds of pitches. Guyett said many professional and Division One college baseball teams use the Hack Attack system.

"What it allows us to do is have competitive hitting leagues in the wintertime, so that the players can not only practice in the winter, they can compete. Normally in Kansas, that's not possible," Gross said.

The Yard will also offer other services to help baseball and softball players improve. Guyett is developing training programs and will offer individual pitching and batting lessons, and he and Gross intend to schedule camps designed to enhance specific skill sets.

"Camps are a big part of it," Guyett said. "We are planning on doing full groups but also specialized camps, including some that are just for infielders, or just for outfielders. We'd like to have a catching camp and a pitching camp; maybe take an entire day and just work with middle infielders — second basemen and short stops."

"We'll have camps for kids of all ages and we'll have different specific track or training programs for kids that are a little older," Gross said.

The Yard won't just focus on players. Gross and Guyett both intend to offer help to baseball and softball coaches as well.

"We want to coach the coaches so their teams are well prepared to play ball," Gross said.

Guyett is developing a website, theyardsalina.com, where players and coaches can sign up for lessons, book practice times or purchase memberships. The site also details the facility's wide variety of services and programs.

"We already have a lot of coaches interested in having a membership to it," Gross said. "In addition to supporting the coaches at Kansas Wesleyan University, we've talked to the local and area high school coaches. We want to make it so that they have the resources available to develop their athletes."

Gross said he and Kate believe The Yard will not only be a great thing for the community, it will also provide an additional piece to the ongoing rebuilding of downtown Salina.

"We loved the idea of putting it right down there where there's already families going for other sports, for dance, for twirling, for yoga, for shopping and restaurants," he said.

Guyett said hearing from former players he has coached or trained is what he most enjoys, and what excites him about this new opportunity.

"The kids are great," he said. "It's fun to see them succeed. Every year I'll get a text message, 'Hey, I hit my first home run,' or 'Thank you for all you've done. I just pitched a heck of a ball game.' So that's what keeps me going is seeing the success these kids can have if they put their mind to it and work hard."

Exhibit DD Defendant's Amended Response to First Set of Interrogatories

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DEFENDANT'S A RESPONSES TO PLAINTIFF'S FIRST SET OF A

Defendant City of Salina, Kansas ("the City"), by and through its attorneys Fairfield and Woods, P. C., hereby submits the following Amended Responses to Plaintiff's First Set of Interrogatories. The selected responses are set forth below:

A B

1. Defendant objects to Plaintiffs' terms and definitions to the extent they attempt to impose obligations beyond the scope of the Federal Rules of Civil Procedure.

2. Pursuant to the stipulation set forth in the Scheduling Order (Dkt. 29) at p. 6, Defendant objects to the production of any privilege log requiring Defendant to log documents or communications created on or after February 19, 2024 that are subject to the attorney-client, work product, and anticipation of litigation privileges.

3. Defendant objects to each discovery request to the extent it seeks the disclosure of documents or information protected from discovery by the attorney-client privilege, attorney work product doctrine, or any other applicable privilege or immunity. Any inadvertent disclosure

of any privileged communication or documents shall not constitute a waiver of the applicable privilege, and Defendant reserves the right to seek return of all copies of any privileged communication.

4. Defendant objects to each discovery request to the extent that it seeks to require Defendant to disclose public documents that are equally available to all parties.

5. Defendant objects to each discovery request to the extent it is vague, ambiguous, overly broad, unduly burdensome and oppressive, irrelevant to the claim or defense of any party, or otherwise not proportional to the needs of the case. F.R.C.P. 26(b)(1).

6. Defendant objects to each discovery request to the extent it contains multiple, discrete subparts. F.R.C.P. 33(a)(1).

7. Defendant's responses are based on a reasonable and diligent search for information and are made to the best of its present knowledge, information, and belief. Because discovery in this matter is ongoing, Defendant reserves its right, consistent with Federal Rule of Civil Procedure 26(e), to supplement its Responses with additional or different information that further investigation or discovery may reveal.

8. Defendant objects to each request to the extent it requires Defendant to provide a narrative account of its case or inquire beyond material facts supporting specific factual matters raised in the pleadings. , , , 170 F.R.D. 182, 186–87 (D. Kan. 1997) and , 180 F.R.D. 403, 404 (D. Kan. 1998).

Defendant objects to the extent the burden of deriving the answer from business records is substantially the same for Plaintiffs as it is for Defendant. F.R.C.P. 33(d);

Linnebur v. United Telephone Ass'n, Inc., 2011 WL 3490022, *5 n.46 (D. Kan. Aug. 10, 2011).

10. The foregoing General Objections apply to and are incorporated into each and every specific Response below, whether or not expressly incorporated by reference. The repetition or omission of any General Objection in the Responses below should not be construed to mean that other applicable General Objections are not being asserted.

A

7. Please identify any murals that exceed the mural-sign code regime's size restrictions which the Defendant has determined are unregulated "art" within the last 5 years.

B A
Sign Code or BID Code as the "mural-sign code regime." Subject to and without

. 42-764.
42-764 .

.
A cannot "identify" as requested.

8. Please identify any murals that exceed the mural-sign code regime's size restrictions which the Defendant has determined are regulated "signs" within the last 5 years.

B A
B Code as the "mural-sign code regime." Subject to and without objection, the City does not use or apply the term "mural" as defined by
. 42-764
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- **B**
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- **B**
- **1212**
- **684 B**
- **1017 .**

- **2045 . .**
- **1805 .**
- **B 650 . A**
- **B 1325 . .**
- **301 . 9 .**
- **701**
- **662 . 9 .**
- **736 A**
- **708 . A**
- **1212 .**
- **1008 .**
- **2360**

Respectfully submitted this 23rd day of August, 2024.

s/ Aaron O. Martin
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Bar Number 24170
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A

I, Mike Schrage, as City Manager for the City of Salina, Kansas, declare that the foregoing responses to the interrogatories contained in the foregoing A A A A A are true and correct as of this date based upon my present knowledge, information, and belief.

DocuSigned by:

6D0400503E2B494...

Signature

Executed on August 23, 2024

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of August, 2024, I caused the foregoing **DEFENDANT'S A RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES** to be served on the following parties by electronic mail as follows:

Jeffrey Shaw.
Samuel G. MacRoberts
Kansas Justice Institute
12980 Metcalf Avenue, Suite 130
Overland Park, KS 66213
Telephone: 913-213-5121; 913-213-5018
E-mail: jeff@kansasjusticeinstitute.org; sam.macroberts@kansasjusticeinstitute.org

Amanda C. Jokerst

Exhibit EE
Public Emails

Message

From: no.reply@govbuilt.net [no.reply@govbuilt.net]
Sent: 2/20/2024 12:58:35 PM
To: Michelle.martin@salina.org; lilian.morales@salina.org; marissa.patton@salina.org; holly.mcginnis@salina.org
Subject: Citizen Submission for Address: 108 North 7th Street, Salina, KS 67401 Case #: Requests-2024-000048

City of Salina, Kansas

Hello,

A report a concern submission has been submitted. Click here to View Case. Below is the submission information.
Issue Location: 108 North 7th Street, Salina, KS 67401
Type of Issue: Discrimination
Comments: It's rediculous that you're not allowing Cozy to paint a mural on their building. It's anti-American to block them. Shame on the city.
Submitter: Adam Borst
Email: borst.adam@outlook.com
Phone: (178) 553-1973

Thanks,
City of Salina

GovBuilt only provides a platform to complete the application. To contact the City of Salina, Kansas call 785-833-8066.

Message

From: James Newton [jrnewton@cox.net]
Sent: 3/15/2024 12:43:58 PM
To: Trent.Davis@salina.org; mike@landtitlesalina.com; greglenkiewicz@gmail.com; Bill.Longbine@salina.org; Jerry.Ivey@salina.org
Subject: Cozy Inn

Good afternoon.

I and a lot of others don't quite understand what the big deal is about the Cozy painting on there building. Is the business's north of the Cozy Inn against the painting and get the smell from them cooking? Can't this be solved like human beings instead of wasting my tax dollars? Thanks Jim. 785-404-6721

Message

From: Gretchen Hunt [gretchenmhunt@gmail.com]
Sent: 3/6/2024 7:50:34 PM
To: Bill.Longbine@salina.org; Jerry.Ivey@salina.org; Trent.Davis@salina.org; greglenkiewicz@gmail.com; mike@landtitlesalina.com
Subject: Cozy Inn

I would like to voice that Salina is a town in which I am proud to be from. My family has had business here for many years. We have supported and funded many projects and continue to give back to the community. However, the current politics of the City of Salina are repulsive and embarrassing. A current example is evident in the City prohibiting a proprietor on how they choose to display their business.

The Cozy Inn is a landmark of Salina and the Council would be remiss to not acknowledge this. A mural/sign/billboard or whatever terminology you choose to assign the painting at The Cozy Inn could potentially bring people to town who want to simply see something interesting. Is it not true that the business owner is doing this at his own expense? As well the design is in no way offensive.

I encourage you to prudently change or make an exception to the current code so that this project may continue.

I have never been to the Cozy Inn and witness the building not being kept up, there be trash on the ground, or unkept landscaping. However, this is present at many other businesses in town. Perhaps after you dissolve this issue with The Cozy Inn owner you could focus on businesses cleaning up their property around the city.

Respectfully,

Gretchen M Hunt RN
Descendent of HJ and Paulina Berkley

Message

From: Marsha Taylor [biznotch4life@gmail.com]
Sent: 2/21/2024 7:20:56 AM
To: signs@salina.org
Subject: Cozy Inn

You could think that the art work on Cozy Inn building is genius. It bring people from out of town and out of state for a Cozy burger. What do most people do after eating?? They walk around visit downtown stores and spend money. It is a great way to bring in people and their money.

Unless you don't extra revenue for Salina!

Message

From: Manjeet Ranu [porcupineblur@me.com]
Sent: 2/20/2024 5:11:38 PM
To: signs@salina.org
Subject: Cozy Inn

Please adapt City regulations to accommodate their mural. The business is historically and culturally significant. And tasty. Thank you.

-Manjeet Ranu, AICP

Message

From: Mike Stanley [mikestanley028@gmail.com]
Sent: 3/20/2024 4:31:18 PM
To: Jerry Ivey [Jerry.Ivey@salina.org]
Subject: Cozy Inn Hamburgers & Artwork

Jerry,

Just an opinion. I think Salina should leave Cozy Inn alone. Looks like a lot of taxpayer money is being spent here. Everyone knows what they do. The mural they were working on could be advertising, but then again could be about their long history in Salina.

I am also not a fan of high dollar artwork. I read in the Salina Journal $20K was spent on an art piece. Tax and Spend has its limits. We do not need to try and emulate those on the federal level.

I think we need to keep spending in check.

Thanks,

Mike Stanley

Message

From: Brenda Collins [bscollins.77@hotmail.com]
Sent: 3/6/2024 10:26:09 PM
To: trent.davis@salina.org; mike@landtitlesalina.com; greglenkiewicz@gmail.com; bill.longbine@salina.org; jerry.ivey@salina.org
Subject: Cozy inn mural

I personally do not see what the big deal is about the mural. I believe we should allow him to finish it. It brings business to your downtown area which means more tax dollars for Salina. We have bigger issues to worry about in Salina - streets needing redone, street lights that do not work properly, etc. When those problems are taken care of maybe then you can concern yourselves about hassling the poor business owners over stupid things like this.
Also I do not appreciate my tax dollars being spent on murals. At least this business owner is paying for it himself.

Brenda Collins.

Sent via the Samsung Galaxy S22 Ultra 5G, an AT&T 5G smartphone
Get Outlook for Android

Message

From: stevenm2397@yahoo.com [stevenm2397@yahoo.com]
Sent: 2/20/2024 4:08:38 PM
To: signs@salina.org
Subject: Cozy Inn Sign Mural

We live in Derby Kansas, however, we lived in Abilene for 11 years. I taught at Roosevelt-Lincoln Middle School for those 11 years. My wife and I frequented the Cozy Inn for their burgers and because of their history.
We are both now retired and have traveled in 35 +/- states since our retirement. We enjoy passing through towns and cities and seeing Murals, having many times gone around the block to get a closer view. Cozy Inn has been around, if I have my history correct, since 1922. It is a historic place in Kansas; in Salina. We know there are other murals in Salina. Why not allow this one? We believe it simply adds to the charisma of Cozy Inn and Salina.
Thank you for this consideration.
Steve and Emily Murphy

Sent from my iPhone

Message

From: Chris Knight [kadvantage@gmail.com]
Sent: 11/14/2023 8:48:22 AM
To: Trent.Davis@salina.org; mike@landtitlesalina.com; greglenkiewicz@gmail.com; Bill.Longbine@salina.org; karlryan@ryanmortuary.com
Subject: Downtown art and business

I am surprised at the uproar over the COzy inn, one of Salina landmarks. I have seen the art or advertising and it is something that should be allowed. It is their Business to make decisions about. It should not be up to a group that has a dictatorship over what meets their standards. It is not their business. Everyone will be there taking selfies in front of it and drawing more people to the Downtown.
Chris Knight

Message

From: scott.gardner@salina.org [scott.gardner@salina.org]
Sent: 2/20/2024 3:16:18 PM
To: Signs@salina.org
Subject: FW:

I just got this.

Respectfully,

Scott Gardner
Director CT, CPI, Media
City of Salina
Phone: (785) 309-5755

From: Scott Smith <my2boys01@gmail.com>
Sent: Tuesday, February 20, 2024 4:14 PM
To: Signs <Signs@salina.org>
Subject:

You are about to become another Kansas town in National Spotlight as a laughing stick over the Muriel on Cozy Inns building. Is Thia how you spend your tax payers hard earned money? I don't know who the uptight individual(s) are, but try loosening your belt and go smell the flowers and leave small business owners and citizens alone who are expressing their right to free speech and expression.

Message

From: jamto4599 [jamto4599@yahoo.com]
Sent: 2/21/2024 6:51:48 PM
To: signs@salina.org
Subject: Let them have their mural!!

Let them have their mural! Cozy Inn is a wonderful bit of history and a draw for the city of Salina. This mural would cause no harm or any negative impact. Thank You

Sent from my Verizon, Samsung Galaxy smartphone

Message

From: Mary Weigel [weigelmj@icloud.com]
Sent: 2/22/2024 9:55:04 AM
To: signs@salina.org
Subject: Mural madness

Sent from my iPhone
We were sad to read about the dilemma of the mural at Cozy inn. Both of us grew up in Salina with Cozy Inn being part of our childhood. Passing thru or visiting Salina we usually always buy frozen ones to bring home after enjoying fresh ones. To focus on the sign as advertising in our opinion is an overstep.

So many things in this world bring filth, madness, lack of tolerance. Let's accept this as a sign of dedication to building and maintaining a strong link to Salina thru many generations. Fight this to the end, we want that mural!!
Don and Mary Weigel

Message

From: Amy Lagerman [amyl0321@yahoo.com]
Sent: 3/6/2024 9:13:11 PM
To: Trent.Davis@salina.org
Subject: Mural

Hello,
I will not be able to attend the meeting concerning the mural on the side of Cozy's. But here is my opinion.
First, I think that the this whole issue is ridiculous and waste of time.
Second, why is the city ok to pay thousands upon thousands on murals (from outside artist) but not from a local that isn't costing us anything? Because of "wording"?
Third, what is the difference between this mural compared to side of Scholtzkeys?
In conclusion, it's a private citizen painting HIS property. If you take away his RIGHT it just puts Salina & commissioners in a horrible light. (And let's face it, you guys already have bad relations with the community)
Sincerely,

Amy Lagerman

Yahoo Mail: Search, Organize, Conquer

Message

From: Helen Solle Conner [helenmsolle@gmail.com]
Sent: 3/19/2024 8:02:40 AM
To: signs@salina.org
Subject: Murals and Signage can commingle

As someone who lives in a city where signage and murals have existed next to one another for decades I understand the nuisances of the Cozy Inn signage discussion, but ultimately the murals will win.

Street murals (even when depicting the contents of a building's business) drive foot traffic by their very nature. People love the creative approach, AND they want a picture with the mural.

This very scenario played out here and became a completely revitalized downtown neighborhood and saved a couple dangerous areas on our bike trails from being abandoned.

When our local artists community started there were three old murals from the 1900s and 1970's that were refurbished, then an art gallery added a new one, and then after the loss of one our most beloved artists a mural dedicated to him went on another gallery wall.

Those 5 murals became a lifeline for businesses. Those 5 simple murals (2 of which would fail YOUR current signage regulations) began to generate foot traffic within days of paint brushes being picked up. News stories about the interest in them drove more folks downtown to peek.

THEN a few of our local artists went our amazing Arts Council proposed a mural festival - which we have now been holding each October for 9 years.

The SHINE Muralfest brings together artists from our local community and internationally recognized artists from across the world and we get the joy of 40 new works of public art each year! We now have more than 600 murals in our city, and more are planned every day.

It has completely transformed our community from downtown to our inner city bike trails. Crime in blighted and industrial areas has dropped SIGNIFICANTLY within the last 7 years of the project.

It also generates enough revenue that many of our artists have had to move on to other parts of the city, because the rest of the city wants one - and real estate values have tripled downtown since foot traffic has increased and crime has plummeted!

I'm a web developer and I built a website with 3 artists who were sign painters - that became muralists! They opened a gallery, sell supplies, and now teach sold out spray painting classes to students of all ages! A homegrown success story.

It's a simple win win for EVERYONE, and I HOPE your community will embrace the creativity the Cozy Inn mural has shown, and inspire others in your community.

Best wishes for you all.

Thanks for reading!
Helen Solle

Message

From: jerry.ivey@salina.org [jerry.ivey@salina.org]
Sent: 3/4/2024 7:43:40 AM
To: bretzr@st-tel.net
Subject: RE: visitor input

Thanks for emailing us your comments. Unfortunately we cant comment on this issue right now, because of the lawsuit on it.

Jerry Ivey
Salina City Commission
785-577-1058

From: Roberta Bretz
Sent: Tuesday, February 27, 2024 12:17 PM
To: Davis, Trent; Hoppock, Mike; Lenkiewicz, Greg; Longbine, Bill; Ivey, Jerry
Subject: visitor input

Dear Commissioners,

I just read a story about the Cozy Inn in Salina.

We love the Cozy Inn. What a wonderful example of a hard-working, enduring business. It is a definite asset to Salina.

I want to encourage you to just support your businesses --- especially your long-time, faithful businesses.

Please just let them finish their very cute, creative mural and not waste their time on 'arguments'. All these years they've served your community and millions of us who have come your way.

Thank you.

Sincerely, Roberta Bretz

Message

From: Keely Denning [kjdenning@outlook.com]
Sent: 11/13/2023 10:41:23 PM
To: Trent.Davis@salina.org; mike@landtitlesalina.com; greglenkiewicz@gmail.com; Bill.Longbine@salina.org; karlryan@ryanmortuary.com
Subject: Signs

Hello all,
I watched the issue concerning Cozy building.
I do enjoy the the bright colors in the area of which is rather a drab area of downtown.
What were laws concerning signs at the time Cozy Burgers opened? The business has always been in that spot, and I wonder if they are grandfathered into the law of when they opened.
Just to the north, one building had an old advertisement painted on the wall for Bull Durham Tobacco. At the time the mural was done, I believe tobacco was sold in that building.
If a business that has been in the same place for as many years as Cozy has been, they should be able to be grandfathered, which eliminates the issue of other stores painting murals in advertising.

Is Vernon's Jewelry as old of business as Cozy?

Keely Denning
Salina

Sent from my iPad

Message

From: Kate Copp [kathybishop.copp@gmail.com]
Sent: 3/6/2024 9:10:47 PM
To: bill.longbine@salina.org
CC: jerry.ivy@salina.org; trent.davis@salina.org; greglenkiewicz@gmail.com; mike@landtitlesalina.com
Subject: The Cozy Inn

100% let the painting go up on the Cozy Inn! The graphics are so amazing and fun! It would definitely bring folks off of 9th to check out the sign and maybe become a great place to take photos in front of which could also mean they would then explore downtown Salina. I always tell folks in my fb groups that are traveling I-70 to exit on 9th and hang a left on Iron to experience Cozies! The city and business owners want more taxes and money...and a very cool mural that the city does NOT have to pay for just might bring more money to downtown merchants. The Cozy Inn is an iconic Salina business.

Kathy Copp

834 Manor Rd, Salina, KS

Exhibit FF
White Deposition Excerpts

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

COZY INN, INCORPORATED, d/b/a
THE COZY INN; STEPHEN HOWARD,
Plaintiffs,

vs. Civil Action No. 6:24-cv-01027-TC-ADM

CITY OF SALINA, KANSAS,
Defendant.

DEPOSITION OF
MARK WHITE,

taken on behalf of the Plaintiffs, pursuant to Notice to Take Deposition, beginning at 9:07 a.m. on the 31st day of October, 2024, at Kansas Justice Institute, 12980 Metcalf Avenue, Suite 130, in the City of Overland Park, County of Johnson, and State of Kansas, before Sandra S. Biggs, Kansas CCR No. 0716.

BY MR. MACROBERTS:

Q. If you -- so I have -- I've given you the exhibits for today's deposition. Exhibit 1 I'll represent to you is the expert disclosure that was filed. It might help you just to be able to look at that for a little bit. I see in the disclosure that Salina considers you an expert in urban and regional planning. Is that urban and regional planning the same thing that you got your master's in?

A. Yes.

Q. And Salina's considering you an expert in zoning. Do you see that?

A. Yes.

Q. What does that mean to be an expert in zoning?

A. Well, zoning involves the regulation of land use and development of land use in a community, and that's something that we engage in and that I have engaged in for over three decades.

Q. What is form-based zoning? It's mentioned here in Exhibit 1 if that's helpful.

A. Yes. Form-based zoning is a type of zoning regulation that de-emphasizes the regulation of uses and focuses more on regulating

Q. What about legal cases? Did you cite legal cases that have the tendency to -- that could have the tendency to undermine your opinions?

MS. JOKERST: Object to form.

A. Not that I'm aware of, but there could be statements in those cases that somebody could use as an argument against things that are in the report, I suppose.

BY MR. MACROBERTS:

Q. Did you include any disputed facts or any facts that could undermine your opinion?

MS. JOKERST: Object --

BY MR. MACROBERTS:

Q. -- in your report?

MS. JOKERST: Object to form.

A. Not that I recall.

MR. MACROBERTS: Can we take a five-minute break?

THE WITNESS: Yes. I was going to ask the same thing.

MR. MACROBERTS: Yeah.

(THEREUPON, a recess was taken.)

BY MR. MACROBERTS:

Q. All right. Mark, do you know whether the

City of Salina commissioned or conducted any studies before drafting any version of their sign code?

MS. JOKERST: Object to form.

A. I am not aware of any.

BY MR. MACROBERTS:

Q. Do you have any knowledge about why the sign code had been amended at any point?

MS. JOKERST: Object to form.

A. No.

BY MR. MACROBERTS:

Q. Are you aware of any peer reviewed studies that have analyzed the efficacy of Salina's sign code in promoting the goals, objectives and policies of the comprehensive plan?

MS. JOKERST: Object to form.

A. I'm not aware of any peer reviewed studies specifically to -- specific to Salina's own sign code.

BY MR. MACROBERTS:

Q. So then I was going go through each one. I appreciate you saying that. How about any studies at all. My previous question was peer reviewed studies. Are you aware of any studies that have analyzed the efficacy of Salina's sign

code?

MS. JOKERST: Object to form.

A. I am not aware that there were or were not studies specific to Salina's sign code.

BY MR. MACROBERTS:

Q. So one way or the another, you're not aware?

A. Correct.

MS. JOKERST: Object to form.

THE WITNESS: Sorry, Amanda. Go ahead. Amanda objected.

MR. MACROBERTS: It is noted. I am certain of that.

BY MR. MACROBERTS:

Q. All right. So for purposes of your report, you used the word mural to mean, quote, an outdoor exhibit painted on a wall that does not fall with the sign code's parameters and that may include art but does not announce, direct attention to or advertise. You meant within. Is that right? Does not fall within the sign code's parameters?

MS. JOKERST: Object to form.

BY MR. MACROBERTS:

Q. And for reference --

clutter contributes to decline and traffic safety and in the same paragraph write public art does not create this type of distraction. Do you see that?

A. Yes.

Q. You don't define what public art is in that, correct?

MS. JOKERST: Object to form.

A. I do not have a footnote on that page that defines what public art is.

BY MR. MACROBERTS:

Q. There's no citation in your report for the proposition that public art can't create clutter?

MS. JOKERST: Object to form.

A. I don't think that there's any documents cited in the report that says that public art could never create clutter.

BY MR. MACROBERTS:

Q. Are you aware of any evidence that establishes that private art is more dangerous than public art?

MS. JOKERST: Object to form.

A. Well, I don't have a definition of those two, but that said, I'm not aware of a report that

gets into the distinctions between those two and their impacts.

BY MR. MACROBERTS:

Q. Are you aware of any studies that establish private art is more dangerous than public art?

MS. JOKERST: Object to form.

A. Not off the top of my head, no.

BY MR. MACROBERTS:

Q. Are there any cases that establish private art is more dangerous than public art?

MS. JOKERST: Object to form.

BY MR. MACROBERTS:

Q. That you're aware of?

A. Not that I'm aware of.

MR. MACROBERTS: It's 12:10, do you want to take a break.

THE WITNESS: Certainly.

MR. MACROBERTS: All right.

(THEREUPON, a recess was taken.)

BY MR. MACROBERTS:

Q. All right. Mark, are you -- are you aware of any evidence that establishes that commercial content painted on a wall is more dangerous than non-commercial content painted on a

wall?

MS. JOKERST: Object to form.

A. I'm not aware of anything that specific.

BY MR. MACROBERTS:

Q. Are you aware of any study or case law that establishes that commercial content painted on a wall is more dangerous than non-commercial content painted on a wall?

MS. JOKERST: Object to form.

A. Again, I can't think of anything that specific.

BY MR. MACROBERTS:

Q. Okay. Are you aware of any evidence that would establish that a burger-esque UFO mural is more dangerous than a pizza-esque UFO mural?

MS. JOKERST: Object to form.

A. Again, I can't think of anything that specific.

BY MR. MACROBERTS:

Q. Same with studies and case law. There are no studies in cases that would say that?

A. I --

MS. JOKERST: Object to form.

A. Oh, go ahead.

MS. JOKERST: Just object to form.

BY MR. MACROBERTS:

Q. I want to go back to Deposition Exhibit 5, the photograph of the Mural at the Mill. Do you agree that the Mural at the Mill is not dangerous?

MS. JOKERST: Object to form.

A. I don't have any data about the Mural in the Mill and its impacts on traffic safety.

BY MR. MACROBERTS:

Q. Do you have any reason to believe that the Mural at the Mill display is dangerous?

A. No.

Q. Would the exact same mural become dangerous if a daycare business had it painted on their wall?

MS. JOKERST: Object to form.

A. Not that I know of.

BY MR. MACROBERTS:

Q. What about if a daycare business started operating inside the mill? Would the mural become dangerous once a daycare started operating inside?

MS. JOKERST: Object to form.

A. I would have to know more about the business itself to assess its own land use impacts.

BY MR. MACROBERTS:

Q. Not talking about land use impacts.

A. It's a very generic term, daycare business.

Q. Sure. Let's say that this mural is still at the mill and let's say a daycare business started operating inside the mill, compliant with the code, the kids are inside, they're not running out in the streets, things like that. Okay. Does the mural become dangerous simply because a business was operating inside of that that pertained to the mural?

MS. JOKERST: Object to form.

A. Not that I know of.

MS. JOKERST: Sorry. Did I miss a question? I heard like a cough and then what sounded like maybe someone said why.

MR. MACROBERTS: No. There was no question.

MS. JOKERST: Oh, okay.

BY MR. MACROBERTS:

Q. You testified in your report that aesthetics is a substantial and compelling interest, correct?

A. Yes. I testified that it's either one.

were at issue in those cases.

Q. Are you aware of any complaints made about the display at The Cozy other than from city workers?

A. No, I'm not aware of any -- any complaints that were filed.

Q. Are you aware of any academic research that either does or does not support the notion that the public likes painted signs less than other types of painted displays?

MS. JOKERST: Object to form.

A. I'm not aware of any studies that distinguish painting on a wall versus painting somewhere else.

BY MR. MACROBERTS:

Q. What about the different types of paintings on a wall? Are you aware of any research that says one type of painting on a wall is more aesthetically pleasing than another type of painting on a wall?

MS. JOKERST: Object to form.

A. Not that I can recall.

BY MR. MACROBERTS:

Q. Are you aware of any evidence that would establish that a burger-esque UFO is less

aesthetically pleasing than a pizza-esque UFO mural?

MS. JOKERST: Object to form.

A. Not that I can recall.

BY MR. MACROBERTS:

Q. Are you aware of any study that would establish that a burger-esque UFO mural is less aesthetically pleasing than a pizza-esque UFO mural?

MS. JOKERST: Object to form.

A. I can't recall anything that specific.

BY MR. MACROBERTS:

Q. Are you aware of any evidence, study or case that establishes that commercial content painted on a wall is less aesthetically pleasing than non-commercial content painted on a wall?

MS. JOKERST: Object to form.

A. In terms of painting on a wall specifically, not specifically, but there are tons of studies on the traffic distraction factor associated with commercial signs.

BY MR. MACROBERTS:

Q. Well --

A. So --

Q. -- I appreciate that.

A. Okay.

Q. Do you believe that the Mural at the Mill on Exhibit 5 is aesthetically pleasing?

MS. JOKERST: Object to form.

A. To me personally, it is.

BY MR. MACROBERTS:

Q. Does that mural become less aesthetically pleasing if a daycare business were being operated inside the mill?

MS. JOKERST: Object to form.

A. I don't have a basis for saying that it would.

BY MR. MACROBERTS:

Q. On page 8 of your report, you wrote neuroscience studies have demonstrated positive amplitude from persons viewing artwork as opposed to negative responses from viewing commercial symbols. Do you see that?

A. Yes.

Q. Did you read the Cheng, 2023 study?

A. Yes.

Q. Is it your opinion that that is what the Cheng, 2023 study, in fact, said?

A. There is a statement in the study to that effect that I believe cites another study.

about the limitations. So my question to you is do you agree that there weren't control groups for this?

MS. JOKERST: I'll object to form again. It's not a complete copy.

A. Yes. And I don't know because I don't know what the context of control groups is. They may have discussed that earlier. There may be different kinds of control groups. I just don't know.

BY MR. MACROBERTS:

Q. So as you're sitting --

A. Without reading the whole report, I would not know.

Q. Got it. As you're sitting here right now, though, do you know whether that asphalt art report had control groups or not?

A. Not off the top of my head.

Q. We're going to go back to the report, and I think this is going to be fast. We're going to go back to your publication, not report, publication, Exhibit No. 3.

A. Okay.

Q. You agree that your publication is a reliable authority?

MS. JOKERST: Object to form.
A. Yes.
BY MR. MACROBERTS:
Q. All right. On page 14, you wrote while this does not require a compelling interest, the local government has the burden of proof, and bans on speech that target truthful, non-misleading commercial messages are unlikely to survive immediate scrutiny. Do you see that?
A. Yes.
Q. Did I read that correctly?
A. Yes.
MR. MACROBERTS: I have no other questions.
MS. JOKERST: I have some follow-up.
CROSS-EXAMINATION
BY MS. JOKERST:
Q. All right. We'll actually just stay here, Mr. White, on Exhibit 3.
A. Um-hum.
Q. And you were asked a little bit about -- I'm looking here, the pointers. There was some pointers on this. I'm trying to find the page here. So page 15.
A. Um-hum.

CERTIFICATE

STATE OF KANSAS

COUNTY OF SHAWNEE

I, Sandra S. Biggs, a Certified Court Reporter, Commissioned as such by the Supreme Court of the State of Kansas, and authorized to take depositions and administer oaths within said State pursuant to K.S.A 60-228, certify that the foregoing was reported by stenographic means, which matter was held on the date, and the time and place set out on the title page hereof and that the foregoing constitutes a true and accurate transcript of the same.

I further certify that I am not related to any of the parties, nor am I an employee of or related to any of the attorneys representing the parties, and I have no financial interest in the outcome of this matter.

Given under my hand and seal this 4th day of November, 2024.

Sandra S. Biggs

Sandra S. Biggs, C.C.R No. 0716

SANDRA S. BIGGS STATE OF KANSAS CERTIFIED SHORTHAND REPORTER

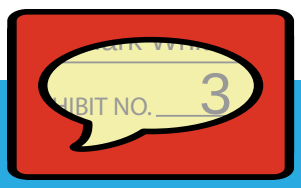
Exhibit GG
Content Neutral Sign Codes After Reed and Austin

SIGN RESEARCH FOUNDATION™



Photo by Joe Ravi CC-BY-SA 3.0

CONTENT-NEUTRAL SIGN CODES AFTER *REED* AND *AUSTIN*



Sign Research Foundation 2022 Analysis
Mark White, White & Smith, LLC

Published November 2022

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AFTER *REED* AND *AUSTIN*

Local governments throughout the United States regulate signs to promote aesthetics and traffic safety. These sign codes typically address the location, dimensions and physical design of signs. Sign regulations often classify signs based on what they say – i.e., their messages.

In 2015, the United States Supreme Court issued its seminal First Amendment decision in *Reed v. Town of Gilbert* that, for all practical purposes, rendered message categories unconstitutional. The *Reed* decision opens a number of grey areas in drafting sign regulations that lower courts have attempted to sort out. One questionable area was resolved nearly seven years after *Reed* to address the issue of on- versus off-premise signs, in *City of Austin vs. Reagan National Advertising.*

This article summarizes the state of the law, sorts through the practical issues in complying with content-neutrality, and offers pointers for local governments considering a sign code update.



What are Content-Based Regulations?

To comply with *Reed*, sign regulations should be "content-neutral" – in other words, agnostic about the sign's message or who is expressing it. While content-neutrality is deceptively simple on its face, it raises practical issues in defining and implementing sign codes.

Content-Neutral Sign Regulation: When a sign is regulated without regard to the message or the speaker.

Content-neutral sign codes regulate signs by their temporal (i.e., whether a sign is temporary or permanent), locational (for example, whether a sign is freestanding or attached, or is in a commercial or residential zoning district), or physical (for example, whether a sign is digital or static) characteristics.

While the First Amendment has permitting and language precision implications for sign codes, the *Reed* decision deals with the issue of message control. *Reed* holds that "content-based" regulations are subject to "strict scrutiny" in the courts. A "content-based" regulation controls the topic of communication, and in some instances the speaker. For, example, in *Reed* the Town of Gilbert, Arizona established a sign category known as a "Temporary Directional Signs Relating to a Qualifying Event," which were signs directing the public to a nonprofit group meeting (such as a church service at a school).

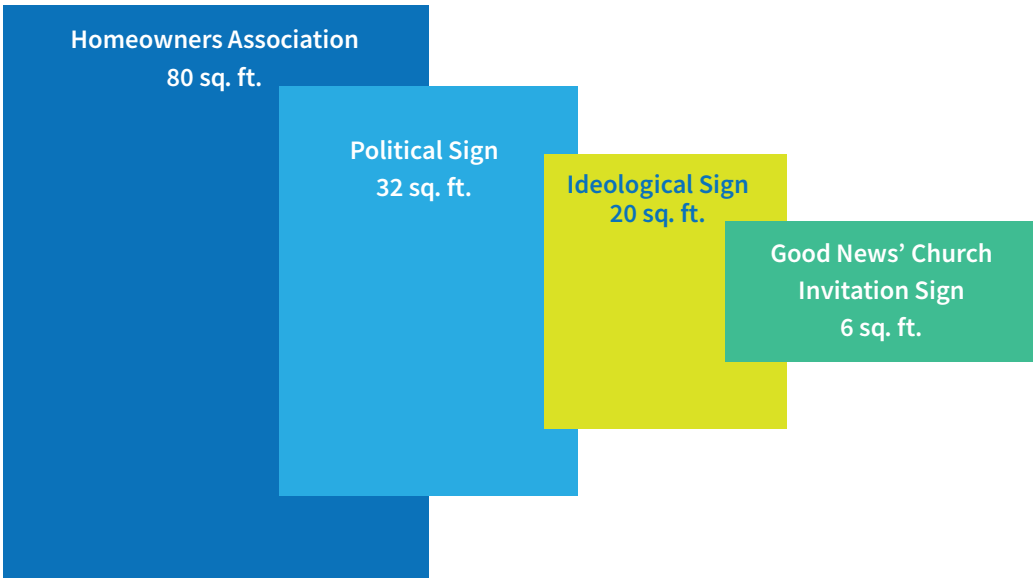
THE TEMPORARY DIRECTIONAL SIGN THAT STARTED IT ALL!

When Pastor Clyde *Reed* wanted people to know where services for his Good News Community Church were located, he was relegated to using these kinds of small temporary directional signs to get the word out. The small church in Gilbert, Arizona, often rented different spaces in temporary locations, making visible and effective signage critical in directing the community. But the Town of Gilbert severely restricted the size, location, number and duration that temporary directional signs could be, especially compared to other signs with political and ideological messages. For example, political signs could be up to 32 square feet and displayed for up to 5 months, but Pastor *Reed*'s signs could only be up to 6 square feet and out for just 12 hours before the services, and taken down after 1 hour afterwards.



Image Source: AZCentral.com (https://www.azcentral.com/story/news/local/gilbert/2015/01/12/gilbert-church-signs-supreme-court-arguments/21636837/)

A temporary directional sign was limited to 6 square feet in area, could stay up 12 hours before and one 1 hour after an event, and only 4 temporary directional signs were allowed on public or private property. By contrast, other temporary sign categories such as "political signs" – defined as temporary signs designed to influence the public elections – were allowed 16 square feet in residential and 32 square feet in commercial districts, could stay up 60 days before a primary and 15 after a general election. The only difference between temporary directional signs and political signs is the kind of message they display.



Display Time Before	Event	Display Time After
UNLIMITED	Ideological Sign	UNLIMITED
4 1/2 MONTHS	Election	15 DAYS
30 DAYS	HOA Event	48 HOURS
16 HOURS	Real Estate Sale	36 HOURS
12 HOURS	Religious Event	1 HOUR

Therefore, the regulations are content-based, i.e., they turn on the sign's content (message), as opposed to its physical characteristics (such as whether it not it is erected on a freestanding pole or attached to a building). This is the case even if the regulations do not discriminate among viewpoints; simply controlling the type of message renders a regulation content-based even when it does not favor some viewpoints over others.

A sign regulation is content-based if the message displayed on a sign has a regulatory impact. Generally, if the zoning administrator has to read the sign to determine what regulations apply, the regulation is likely content-based – with the exception of the on-premise/off-premise distinction, as per *Austin*. Even if the regulation restricts or favors a category of speech for a benign reason (such as to allow churches to guide congregants to services in temporary locations), the regulation is still considered content-based. An innocuous justification cannot transform a content-based law into one that is content-neutral. In addition, the *Reed* decision intimated that content-neutral regulations that target or favor speakers is content-based if it impacts the message.

What Legal Test Applies to Content-Based Regulations?

Content-based regulations are subject to "strict scrutiny" in the courts. This means several things: First, the regulation must serve a *compelling* government interest. A compelling interest is one that exceeds the substantial or legitimate interests supporting a conventional zoning regulation (such as a protecting property rights), and few interests are deemed compelling. Courts have held that aesthetics and traffic safety – the traditional interests that support sign regulations – are not sufficiently "compelling" to support content-based regulations. See *Clark v. City of Williamsburg,* 388 F.Supp. 1346 (D. Kan., 2019), *cert. denied,* 141 S.Ct. 2629, 209 L.Ed.2d 754 (2021) (citing *Quinly v. City of Prairie Village*, 446 F. Supp. 2d 1233, 1243-44 (D. Kan. 2006); *Outdoor Sys., Inc. v. City of Merriam*, 67 F. Supp. 2d 1258, 1269 (D. Kan. 1999); *Solantic, LLC v. City of Neptune Beach,* 410 F.3d 1250, 1268 (11th Cir. 2005). Second, the regulation must be narrowly tailored to that interest.

If other sign categories burden those interests more but are less restricted because of what they say, the restriction is not narrowly tailored. For example, in *Reed,* the Town limited the number and size of temporary directional signs to control clutter, but political signs were unlimited in number and had significantly larger sign allowances. Therefore, political signs were allowed to intrude on the Town's aesthetic interests to a greater extent than temporary directional signs based only on what they said. This was not narrowly tailored to the Town's aesthetic interests. Finally, the regulation is presumed unconstitutional, and the local government has the burden to prove that it meets the first two tests.



Therefore, content-based regulations, or facially-content-neutral regulations justified in relation to content, rarely survive a constitutional challenge when subject to strict scrutiny.

As noted in *Reed*, few sign codes are free of content-based provisions under the Court's content-neutrality standard, both for temporary signs and permanent signs. Every local jurisdiction that regulates signs in their community should review their ordinance and revise it in light of *Reed*, if necessary.

What are Content-Neutral Sign Codes?

Content-neutral sign codes regulate signs by their temporal (i.e., whether a sign is temporary or permanent), locational (for example, whether a sign is freestanding or attached, or is in a commercial or residential zoning district), or physical (for example, whether a sign is digital or static) characteristics. In other words, a sign code that regulates only the "*time, place, and manner*" of signs is considered content-neutral. Content-neutral regulations are subject to intermediate, rather than strict, scrutiny. Courts also apply intermediate scrutiny to regulations that affect only commercial speech.



Intermediate scrutiny requires that a sign regulation is narrowly tailored to serve a *substantial* governmental interest and leave ample alternative avenues of communication. Some lower courts have found that aesthetics and traffic safety are not "compelling" interests under the strict scrutiny standard. However, aesthetics and traffic safety typically meet the "substantial government interest" standard and courts are more deferential in assessing whether those regulations are tailored sufficiently to meet their stated objectives than they are when strict scrutiny applies.

Both the majority and concurring opinions in *Reed* summarized the types of regulations that are considered content-neutral.

Content-Neutral Regulations Include:

1. MAXIMUM SIGN SIZE
2. MATERIALS
3. LIGHTING
4. MOVING PARTS
5. PORTABILITY
6. BANNING OR REGULATING SIGNS IN THE PUBLIC RIGHT-OF-WAY
7. LOCATIONS
8. DISTINGUISHING FREESTANDING AND ATTACHED SIGNS
9. DISTINGUISHING FIXED VERSUS CHANGEABLE ELECTRONIC SIGNS
10. REGULATING SIGNS DIFFERENTLY BY ZONING DISTRICT
11. TOTAL NUMBER OF SIGNS ALLOWED PER FRONTAGE OR AREA
12. TIME RESTRICTIONS ON ADVERTISING A ONE-TIME EVENT
13. GOVERNMENTAL SIGNS

Keep in mind that the regulatory matters listed here are content-neutral only if they are not triggered by the sign's message or user (a possible exception is government signs, which remains a grey area). For example, setting a maximum footcandle brightness for digital signs is, on its face, content-neutral. However, allowing digital signs only for gas prices or churches could be content-based.



Notably, the concurring opinion in *Reed* stated that regulating off-premise signs differently from on premise signs, a traditional element of local and state billboard regulation, is content-neutral. However, this did not preclude billboard operators from litigating against on-premise/off-premise distinctions in cities and states across the country over the next several years. The U.S. Supreme Court recently clarified that issue (see discussion of Off-Premise Sign Regulations, below).

Tips to Comply with *Reed*

To comply with the principles announced in *Reed*, a sign code should establish three (3) broad sign categories based on their physical characteristics. These typically include freestanding signs, attached signs, and incidental signs.

Three Sign Categories Based on Physical Characteristics



FREESTANDING SIGNS

Signs that are not attached to any other structure, ie. pole signs and monument signs.



ATTACHED SIGNS

Signs that are attached to a building or structure, ie. wall signs, window signs and murals.



INCIDENTAL SIGNS

Smaller signs that are physically subordinate to the principal freestanding or attached signs on the site, ie. directional signs, historic markers, temporary signs. (The sign code can break temporary signs into a separate category).

CONTENT-NEUTRAL SIGN CODES AFTER *REED* AND *AUSTIN*

To ensure that a sign code is content-neutral, a community should begin by removing all references to the content of sign types, or sign messages that trigger permitting or related sign regulations. For example, a community could replace project identification sign categories with regulations for a single monument or pole sign for properties in a commercial zoning district. This replaces a message trigger (i.e., whether the sign identifies the site) with the physical parameters of the monument or pole sign. A possible exception is sign categories that directly relate to public safety issues. The majority opinion in *Reed* stated that "[a] sign ordinance narrowly tailored to the challenges of protecting the safety of pedestrians, drivers, and passengers--such as warning signs marking hazards on private property, signs directing traffic, or street numbers associated with private houses-well might survive strict scrutiny."

By contrast, all provisions in a sign code that refer to number, area, structure, location and lighting of signs are content-neutral and unaffected by *Reed* if those categories do not relate to what the sign says. However, keep in mind that other First Amendment requirements apply. For example, a content-neutral regulation that inadvertently chokes off too much speech (see discussion of yard signs below), or that gives a zoning administrator unlimited discretion to deny or condition a sign permit, can intrude on First Amendment rights even if the regulations are facially neutral. Therefore, even if the regulations are content-neutral, a community should make sure that sign allowances are not overbroad and consider how sign permits are processed.

Sign codes should also include severability and substitution clauses.

A severability clause is common to most zoning and land development codes and simply provides that if any part of the code is invalidated in court, the rest of the code remains valid. This is important because there are many grey areas in sign regulations, and both the U.S. Supreme Court and lower courts are still fleshing out the parameters of content-neutrality. A substitution clause simply allows a sign to substitute a noncommercial message on any sign that permits a commercial or another noncommercial message. For a truly content-neutral code, this may seem superfluous. However, this simply clarifies that a sign code regulates only the physical characteristics of the sign and not its message.



Regulating Specific Sign Types

While *Reed's* principles are deceptively simple, there are unsettled issues in its application to specific sign types. These range from traditional temporary placards (such as political yard signs) to lighted projections on buildings. This section explores how the lower courts have treated various, common sign categories and how to address them in your sign codes.

Temporary, Incidental and Yard Signs

Temporary signs are difficult to codify as they are traditionally identified by their message or function. For example, real estate signs relate to the sale of property, and political signs relate to an election. However, a community can regulate the time, place and manner of temporary signs if they are not called out by their message. For example, a sign code can regulate signs based on temporary materials (such as cloth, canvas, vinyl, cardboard, wallboard, or other temporary materials), or temporary types such as feather signs. In addition, the sign code can fold temporary signs into an overall allocation of incidental signs for a site, remaining agnostic about how those signs are used.



For temporary signs, the community should consider a flat time allocation, rather than one tied to specific events. For example, a city amended its sign code after *Reed* to cap the number of temporary signs on any property, with an allocation of 5 additional signs 45 days before and 14 days after an election. This allocation did not restrict the message of the additional signs. In an unreported federal district court opinion, the court ruled that this was impermissibly user-based even though it did not regulate the additional sign's message (www.ricardopacheco.com *et al. v. City of Baldwin Park,* No. 16-CV-09167-CAS, 2017 WL 2962772 (C.D. CA. July 10, 2017)). The court suggested that the community could, for example, allow additional signs for a limited number of times per year not tied to specific events. "For example, the City could authorize five additional signs of up to 12 square feet for 60 days one time per year at the time of the speaker's choosing."

Instead of defining signs by message or function, the sign code should establish overall allocations for incidental or temporary signs. How those signs are used - whether to sell the property, advertise their favorite political candidate, or to express an opinion - is up to the property owner. For example, the City of Indianapolis established a set of standards for "noncommercial opinion signs." After that was found to violate content-neutrality principles, the city replaced that with an overall allocation for yard signs. This was found consistent with content-neutrality requirements (*Geft Outdoor LLC v. Consolidated City of Indianapolis* (S.D. Ind. 2016)). As is mentioned above, however, the overall allocation of yard signs must allow a sufficient amount of speech even if it is content-neutral. Several federal court decisions have invalidated sign codes allowing only one or two yard signs as restricting too much speech, even when those restrictions are content-neutral (*Willson v. City of Bel-Nor* (E.D. Mo. 2020); *Arlington County Republican Committee v. Arlington County* (4th Cir. 1993)).

To avoid administrative and enforcement issues with having to identify whether a sign as "temporary" and enforcing time limits, communities can also fold temporary signs into an overall sign number allocation for incidental signs. If the community believes regulation of temporary signs is needed, it can require stickers that identify when the sign was placed to document compliance with any time restrictions.

A common issue with sign regulations written before *Reed* is regulations that limit flags to those with government or institutional symbols. This is content-based (*Willson v. City of Bel-Nor* (E.D. Mo. 2020)), and any definition of flags should include only their physical description with no limitation to government or other symbols.

Political Signs

Political signs fall into two major categories, including traditional handheld political message signs (picketing, panhandling, "save the turtles") and campaign election signs. Sign codes are traditionally limited to the latter. Political signs are not only a content-based category, but political speech enjoys the highest level of protection in First Amendment case law. Therefore, sign regulation should never target political signs, but rather fold them into incidental and temporary sign allowances. For yard signs, it is advisable to allow additional incidental or temporary signs for a given number of days per year to allow for occasions (such as elections, holidays, or similar times) where additional signs are needed to accommodate speech.



[1]The City later amended its sign regulations to a content-neutral allocation of the number and area of temporary signs, which was upheld on appeal. *Baldwin Park Free Speech Coal. v. City of Baldwin Park,* No. 20-55244 (9th Cir. 2021).

An emerging issue is state preemption of state preemption of political sign regulations. Several states, such as Arizona and Kansas, limit how local governments can regulate political signs during election season. This preemption does not extend to signs that display other forms of speech. How should a local government comply with state law without itself engaging in unconstitutional discrimination between types of speech? At least one federal court case has ruled that the exemption of government signs or signs exempt from state regulation is not content-based (*Signs for Jesus v. Town of Pembroke* (D.N.H. 2017)). Because local governments typically cannot supersede state law, that type of exemption is not itself content-based but rather a recognition that the local government is powerless to supersede state law. In the context of panhandling, a federal district court found that a local regulation that did not incorporate a content-based exemption for solicitations by municipal employees such as firefighters was not content-based even where the city announced an intention to enforce the regulations consistent with state law (*Watkins v. City of Arlington* (N.D. Tex. 2015)).

Special Event Signs

Some sign codes include special regulations or allowances for signs at special events. If those regulations do not require the signs to advertise the special event or something occurring there, it is arguably content-neutral. However, it is unclear whether that would constitute a user preference. Under the current state of the law, it is likely not to constitute a user preference if a special event itself does not restrict expressive conduct. *In Act Now to Stop War & End Racism Coal. v. Dist. of Columbia* (D.C. Cir. 2017), the court upheld a regulation allowing signs posted a public lamppost to remain for up to 180 days, but requiring signs for special events to be removed within 30 days. The court held the regulation was content-neutral because it only regulated where some speech may occur and did not distinguish between events by topic, and was narrowly tailored to the government's interest in controlling clutter. Another court, however, found that an exemption for special and civic event signs (including grand openings) was content-based because one must assess the communicative content of the sign to determine whether the exemption applies (*International Outdoor v. City of Troy* (E.D. Mich. 2017)). More recently, the U.S. Supreme Court in City of *Austin* v. *Reagan National Advertising* (discussed below) distinguished regulations that regulated special event signs generally (which are content-neutral) and those that regulate specific kinds of special events (which are content-based).

Human Signs/Sign Walkers

Some sign codes attempt to regulate signs carried by persons, i.e., the stereotypical costumed Statue of Liberty advertising a tax preparer. Regulating hand-held signs or costumes does not necessarily trigger content concerns, but raises difficulties in distinguishing things like costumes that advertise (e.g., the omnipresent Statue of Liberty) from those that do not (for example, a Statue of Liberty costume designed to send a political message). This also raises difficulties in defining costuming and hand-held signs in a way that meets First Amendment tests for language precision. A pre-*Reed* decision invalidated sign walker regulations based on the *Central Hudson* test (*Kitsap County v. Mattress Outlet* (Wash. 2005)), and at least one state statute (Arizona) addresses sign walkers. Many post-*Reed* cases address panhandling, which does not directly involve a sign display but could involve the same principles of content-neutrality.



Commercial Signs

It remains unclear whether strict scrutiny applies to sign regulations that affect only commercial signs. Sign regulations cannot preference commercial over noncommercial speech (*Metromedia v. City of San Diego* (U.S. 1981)). For regulations that affect only commercial speech, courts have traditionally applied a test announced in *Central Hudson Gas & Electric Corp. v. Pub. Serv. Comm'n* (1980) that asks (1) whether the speech concerns a lawful activity and is not misleading, (2) whether the government's interest is substantial, (3) whether the restriction directly and materially serves the asserted interest, and (4) whether the restriction is no more extensive than necessary. While this does not require a compelling interest, the local government has the burden of proof, and bans on speech that target truthful, non-misleading commercial messages are unlikely to survive intermediate scrutiny. As is discussed below in the context of murals and billboards, communities are finding that limits on commercial signs may not survive judicial review if they wander beyond the sign's physical parameters.



Artwork and Murals

Is artwork a sign? Can cities distinguish art and murals from commercial signs? Artwork (including murals) is expressive conduct protected by the First Amendment. Several cases have ruled that sign codes that either exempt (*Central Radio v. City of Norfolk* (4th Cir. 2016)) or regulate (*Kersten v. City of Mandan,* 389 F.Supp.3d 640 (D. N.D. 2019)) works of art or murals that did not display commercial messages are content-based. Before *Reed,* courts applied intermediate scrutiny to the regulation of commercial speech based on whether the message conveyed is tied solely to economic benefit of the business and serves no purpose beyond the commercial motive. In *Kersten,* the court ruled that design guidelines that prohibit murals with commercial messages but allow other murals that are not commercial is content-based and subject to strict scrutiny. See also *Complete Angler, LLC v. City of Clearwater* (M.D. Fla. 2009)(bait and tackle shop displaying aquatic mural was non-commercial speech, and exemptions for noncommercial works of art and holiday decorations were content-based). *In Morris v. City of New Orleans* (E.D. La. 2019), the city defined murals separately from signs and prohibited commercial advertising on them.

A community who wants to regulate murals can consider the following options:

- **Remove restrictions that exempt or target artwork, along with limits on commercial advertising. The regulations could consider a restriction on text, if the message is not restricted (for example, limiting the text to the artists' signature).**
- **Consider mural subcategories based on their physical characteristics, such as a "wall sign" or "painted wall sign." An issue with this approach is that murals often occupy entire building walls, which exceed typical wall sign limits.**
- **Consider a review process for murals, such as an arts commission review, that examines the artistic quality of the mural. This approach should involve clear standards, time limits, and an express prohibition on considering the mural's content.**

Applying intermediate scrutiny, the court invalidated the mural regulations, finding that "there is nothing in the record to suggest that commercial messages in artwork are more unsightly than non-commercial messages in artwork."

There is also an emerging issue as to whether artistic embellishments are protected. This could involve signs that are embedded in a building's architectural features, or regulating a sign's design elements (such as materials). *In Burns v. Town of Palm Beach* (11th Cir. 2021), the court rejected a First Amendment challenge to in architectural review commissions denial of a building permit to replace a traditional beachfront mansion with a much larger midcentury modern house. Over a strong dissent, the court declined to decide that architecture is expressive conduct. This leaves open common design controls for signs, such as requiring masonry or materials compatible with the principal building style for monument signs. However, if courts were to apply intermediate or strict scrutiny to those types of regulations, local governments would need to examine the basis and regulatory efficacy of sign design controls.



On- vs. Off-Premise Signs:

Off-premise signs advertise products not located on the same premise as the sign, or direct people to off-premise locations. It is common for local sign regulations and state billboard regulations to distinguish on- from off-premise signs. The federal Highway Beautification Act of 1965 (23 U. S. C. § 131) conditions highway funding on outdoor sign regulation, while exempting on-premise signs (i.e., "signs … advertising the sale or lease of property upon which they are located" and "signs, displays, and devices . . . advertising activities conducted on the property on which they are located"). At least two-thirds of state highway beautification regulations and tens of thousands of local sign codes either ban off-premise signs, or subject them to spacing, permitting, and size requirements. Those regulations do not apply to signs that advertise or communicate a business or activity that occurs on the same premise.[2] In *Reed,* a concurring opinion characterized this type of regulation as content-neutral. This is consistent with Supreme Court precedent upholding off-premise sign regulation (*Metromedia, Inc. v. City of San Diego* (1981)).

Both these signs are digital and advertise the same company, but communities are allowed to regulate them differently based on where they are located, according to the U.S. Supreme Court in *Austin* v. Reagan (2022).



Many communities, such as in Austin, TX, prohibit these kinds of digital off-premise signs, or billboards.



Many communities, such as in Austin, TX, allow these kinds of digital on-premise signs, or electronic message centers (EMCs), in the parlance of the on-premises sign industry.

Image Source: Daktronics

[2]In response to concerns that off-premise classifications were content-based, after *Reed* several states revised their outdoor advertising statutes or regulations to replace the premises category with a category for signs that are erected for compensation. See Colorado Rev. Stat. § 43-1-403(1)("Advertising devices" include signs "for which compensation is directly or indirectly paid or earned in exchange for its erection or existence by any person or entity"); Kentucky Rev. Stat. § 177.830(5)("advertising device" means a sign "[o]perated or owned by a person or entity who is earning compensation directly or indirectly from a third party or parties for the placement of a message on the device"); Tennessee Code Ann. § 54-21-102(18)("[o]utdoor advertising device" is "a sign that is operated or owned by a person or entity that is earning compensation directly or indirectly from a third party or parties for the placement of a message on the sign"). A federal district court found the Colorado legislation content-neutral in *StreetMediaGroup, LLC v. Stockinger*, No. No. 1:20-cv-03602-RBJ (D. Colo. 2021), because the state transportation department "need not be aware of a sign's content to determine whether compensation was received for its erection."

The United State Supreme Court recently confirmed that off-premise sign regulations subject to intermediate, not strict, scrutiny. In *City of Austin v. Reagan National Advertising,* 142 S.Ct. 1464 (U.S. 2022), the court considered a sign code that prohibited the digitization of off-premise signs. Plaintiffs claimed that off-premise sign categories are content-based because persons (especially regulators) have to read the signs to determine whether the message related to things occurring on-or-off the site. The U.S. Supreme Court rejected this argument, ruling that the distinction relates to the location of signs and is not inherently directed at the sign's message. Essentially, the court held that the need to read the sign is directed to its location rather than its message. Therefore, off-premise sign regulations that do not preference commercial over non-commercial speech are subject to intermediate rather than strict scrutiny.

While off-premise sign regulations are not presumed unconstitutional, they remain subject to First Amendment challenge. In drafting off-premise sign restrictions, local governments should consider the following:

1. ***Reed's* "Need to Read" Test Does Not Apply to Off-Premise Sign Regulations.** *Austin* reasons that conventional off-premise sign categories require "examination of speech only in service of drawing neutral, location-based lines" rather than controlling the sign's communicative content. However, central to its holding is that the off-premise category did not trigger a specific or substantive category of speech, such as political messages, ideological messages, or directional messages concerning specific events (*Austin*, at 8). Therefore, off-premise sign categories that regulate specific types of off-premise messages or users could implicate higher scrutiny and jeopardize the regulations in court (see paragraphs 3 and 5, below) because they affect the sign's topic, idea or message.

2. **Billboards versus Off-Premise Signs. While many billboards are off-premise signs, the two concepts are distinct.** A billboard is a physical category – typically, a large, freestanding panel sign. By comparison, an off-premise sign can occur in any configuration – including a billboard, a wall sign, or on digital copy. Communities can choose to regulate billboards as physical entities regardless of their message, removing the need to justify distinctions between off-premise commercial messages under intermediate scrutiny. For example, a sign code could define a "billboard" as a panel-type sign mounted on posts or steel frames (see, for example, Westminster, Colorado Sign Code § 11-11-16(D)), or as a freestanding smaller than typical bulletin specifications (672 square feet in area or 14 feet in height).

3. **Off-Premise Distinctions that Regulate Non-Commercial Messages May Trigger Strict Scrutiny.** The *Austin* opinion assumed that the sign regulations at issue regulated only commercial speech. Because non-commercial speech receives a higher degree of protection under the First Amendment, regulations that implicate non-commercial messages (such as political campaign or religious messages) will trigger strict scrutiny. However, regulations that affect any off-premise message – whether or not those messages are commercial in nature – will trigger only intermediate scrutiny.

4. **Limiting Off-Premise Regulations to Commercial Messages is Subject to Intermediate Scrutiny.** Both the majority opinion and dissent in *Austin* recognized that regulations targeting only commercial speech (i.e., advertising or directing customers to a business) are subject to intermediate, not strict, scrutiny (*Austin* at 10 [majority opinion], Thomas, dissenting, at 2, note 1).

[3] *Austin*'s sign regulations, as described in the majority opinion, did not exempt noncommercial speech. *Austin* at 5, note 3.

5 **Off-Premise Regulations that Regulate Commercial Messages Differently may Fail Intermediate Scrutiny.** It is one thing to regulate off-premise advertisements, and another to carve out special treatment for specific businesses. For example, some sign regulations have special permissions for off-premise real estate signs, hospital, or farms. Car dealerships, hospitals, bookstores, or other businesses do not qualify for those exemptions. What government interest justifies not allowing a car dealership to display a sign at an off-premise location while allow that permission for a homebuilder? Why would a general regulation or allowance for off-premise signs – coupled with size, spacing and design restrictions – not promote those interests as effectively? A local government with those categories would need to show how those distinctions are narrowly tailored to serve a significant government interest.

6 **Facially Content-Neutral Off-Premise Sign Regulations Trigger Strict Scrutiny if they have an Impermissible Purpose or Justification.** The majority opinion in *Austin* stated that an impermissible purpose could sink a content-neutral off-premise sign regulation, but gave no examples. One example could include, for example, a regulation that allows for billboards only during election season – where the regulation allows for any form of off-site message, but is designed to favor a particular form of speech (see www.ricardopacheco.com, *supra*).

In drafting off-premise sign regulations, the most conservative approach legally is to regulate only commercial speech (which triggers only intermediate scrutiny), and at least to ensure that the regulations do not explicitly or implicitly favor commercial over non-commercial speech. In addition, regulating only the billboard structure with no off-premise sign restriction is a viable approach legally, but also potentially exposes more locations to off-premise advertising. However, the *Austin* decision clarifies that none of these approaches (without more) will trigger strict scrutiny.





Image Source: Watchfire

Public Forum

Local governments retain wider discretion over the display of their own signs and those on their own property than they do for private signs on private property. However, free speech protections apply when the government opens public property to private expression. In 2022, the U.S. Supreme Court addressed the issue of signs in the public forum. In *Shurtleff v. City of Boston,* No. 20–1800 (U.S., May 2, 2022), the City routinely allowed the display of flags on a flagpole at City Hall with no guidelines or control over who could display them or their content. The City denied the display of a religious flag based on concerns that it would violate the Establishment Clause by endorsing a set of religious beliefs. The City's lack of involvement in selecting flags for display at that location meant that the display was private (not public) speech. Therefore, denying permission to display the flag amounted to viewpoint discrimination in violation of the First Amendment. Local governments should exercise clear control over signs in public spaces where only government speech is allowed, and adopt content-neutral rules for permitted private displays (other than exempt government signs, such as traffic directional signs) in the public forum.



Reed's Top 10 Takeaways

The *Reed* decision changed the way communities and courts look at sign regulations, and its impact is still being felt (and litigated) across the nation. Local jurisdictions applying the content-neutrality principles of *Reed* to their sign code should consider the following:

1. While the facts in *Reed* involve temporary signs, content-neutrality is not limited to temporary signs. The First Amendment protections at issue in *Reed* apply to any form of communicative content - whether the sign is a cardboard election sign in a yard, a large monument sign at the entry to a shopping center, or a mural subject to design review.

2. If a regulation affects the topic or message conveyed, the regulation is content-based and likely subject to strict scrutiny. This applies whether the regulation appears in a sign code, a zoning ordinance, design guidelines, or some other regulation.

3. A sign code should identify all signs (permanent or temporary) by their structure or design (such as the sign's materials, configuration, and presentation – i.e., whether or not it has changeable or digital copy, lighting, and similar visual features), rather than what they say.

4. Communities do not usually run into trouble simply because they regulate a sign's dimensional standards or design features. Instead, sign codes trigger strict scrutiny when they create either: (1) exemptions for preferred categories of speech, or (2) target categories of speech for regulation through their sign code.

5. Communities who want to specifically regulate temporary signs can continue to do so, but should base their regulations on the signs structure type (such as feather signs, windblown signs, or cardboard placards mounted on a metal frame) and uniform event triggers (such as 5 to 10 temporary signs along a frontage for up to 30 days four times a year).

6. Traditionally, courts have given more deference regulation of commercial content through intermediate scrutiny. However, some lower courts have started to apply strict scrutiny to commercial content categories and it is fair to say that the state of the law is unclear.

7. *Reed* does not require signs to be bigger, cluttered, brighter, or otherwise an obstacle to a community's aesthetic or traffic safety objectives. It simply advises communities to focus carefully on the physical characteristics of signs that they truly need to regulate, and to avoid interfering with a sign's message.

8 **To control clutter and driver distraction, sign codes can use allocation-based systems that allow persons and property owners to allocate messages as they see fit within the parameters established by the sign code's dimensional standards.**

9 **There are other First Amendment requirements and constitutional issues to consider, such as overbreadth, vagueness, and how long it takes to issue a sign permit. Those are beyond the purview of this article but remain important considerations.**

10 **Distinctions between on- and off-premise signs are sufficient under *Austin*, if they do not involve other content-based categories (for example, allowing off-premise signs for some messages but not others).**

Communities applying these content-neutral principles can develop and implement sign codes that promote community character, traffic safety, and economic development.

About the Author:

Mark White is a senior partner with White & Smith, LLC – a multi-disciplinary law firm based in Kansas City and Charleston that specializes in zoning and sign code updates. White & Smith, LLC has led or participated in over 150 zoning and sign code updates in 36 states. Mr. White is a nationally-recognized expert on planning and law presents frequently on sign law and regulations at planning and law conferences, and has spearheaded numerous zoning and sign code updates. Mr. White has over forty publications appearing in books, law journals, and planning literature.

IS YOUR COMMUNITY EXPLORING SIGN CODE CHANGES?

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signhelp@signs.org
FOR COMPLIMENTARY ANSWERS

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In the United States District Court
for the
District of Kansas

Cozy Inn, Incorporated, d/b/a The Cozy Inn; Stephen Howard. Plaintiffs, v. **City of Salina, Kansas.** Defendant.	Civil Action No. Declaration of Charles R. Taylor, Ph.D. in Support of Plaintiffs' Motion for Summary Judgment

DECLARATION OF CHARLES R. TAYLOR, PH.D. IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I, Charles R. Taylor, was retained to testify as an expert by Plaintiffs in this matter. I verify under penalty of perjury under the laws of the United States of America the following:

1. A true and accurate copy of my expert report is attached as Exhibit 1 to this Declaration.
2. A true and accurate copy of my curriculum vitae is attached as Exhibit 2 to this Declaration.
3. I will testify at trial or for other purposes consistent with the contents of the expert report and my curriculum vitae.

Dated: February 3, 2025

Charles R. Taylor, Ph.D.

Charles R. Taylor, Ph.D.

Taylor Declaration Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Civil Action Case No. 6:24-cv-01027-TC-ADM

Cozy Inn, Incorporated, d/b/a The Cozy Inn; Stephen Howard,

Plaintiffs,

v.

City of Salina, Kansas,
Defendant.

Expert Report of Charles R. Taylor, Ph.D.

September 20, 2024

Summary of Expert Opinions of Dr. Charles R. Taylor

I am the John A. Murphy Professor of Marketing at Villanova University. I am also Senior Research Fellow at the Center for Marketing and Consumer Insights at Villanova University. I am Past-President of the American Academy of Advertising and currently serve as the Editor in Chief of International Journal of Advertising, a leading journal in the area of consumer marketing. I also currently serve as Vice President of the Global Alliance of Marketing and Management Association. I received my Ph.D. in Marketing from Michigan State University. I am responsible for teaching marketing courses at both the undergraduate and graduate levels at Villanova and am expected to engage in ongoing academic research. I teach marketing courses regularly both in the classroom and in online formats. I am actively involved in several ongoing research projects and have published more than 100 articles in peer reviewed academic journals, in addition to several books and conference papers.

Since 1992, one of my primary research interests has been signage. I have conducted several research studies on this topic, including peer reviewed articles in leading journals including *Journal of Advertising, Journal of Advertising Research, Journal of Public Policy and Marketing* (3), *Journal of Consumer Marketing*, and *Journal of Macromarketing* as well as several peer reviewed conference papers. I have also served on the Executive Board of the Academic Advisory Council for Signage Research and Education, an organization for academics committed to the study of Signage and have held the office of Chairman of the Board (2021-2022) as well as Vice Chair and in other capacities.

I have given presentations on regulatory issues related to signage at conferences of the Transportation Research Board, the American Marketing Association, the Association of

Consumer Research (Transformative Consumer Research Conference), the European Advertising Association, the Outdoor Advertising Association of America, the International Sign Association, and the Signage Foundation. I have also provided testimony based on my research on signage to the U.S. House of Representatives Small Business Committee, the Texas State Senate, the Missouri State Senate, the Philadelphia Zoning Board, and the San Clemente City Council. Moreover, I was an expert informant for the Federal Highway Administration's Assessment/ Mediation of Outdoor Advertising issues in 2006 and was interviewed by the Federal Highway Administration in conjunction with fact finding on policy toward signage in 2010.

I am the lead-author of a book titled *On-Premise Signs as Storefront Marketing Devices and Systems* published by the U.S. Small Business Administration in conjunction with the Signage Foundation. On multiple occasions I have given presentations to industry professionals pertaining to research on signage, including groups such as the International Sign Association, the Signage Foundation for Communication Excellence, the Transportation Research Board, and at the National Signage Research and Education Conference. I have also served as an expert in several legal cases involving signage and issues related to aesthetics, traffic safety, and the value of signs (see Appendix).

I write a regular column for the Chief Marketing Officer (CMO) section of Forbes.com, focusing on consumer marketing issues. I frequently serve as a media commentator on consumer marketing issues and have provided commentary in outlets such as the Associated Press, the Wall Street Journal, the CBS Morning Show, Forbes.com, the New York Times, National Public Radio, CNBC, ESPN.com, Time Magazine, Fox, Reuters, Variety, and many others.

I was recently included in a list of the top 2% of scientists (rated in the top 1% of marketing

scholars) published by a group of researchers at Stanford University. I have received the Ivan Preston Award for lifetime achievement in advertising research, awarded by the American Academy of Advertising and the Flemming Hansen award for outstanding contribution to the field from the European Advertising Association. My research has received the Hans B. Thorelli award from the Journal of International Marketing, and the Charles Slater award for contribution to the discipline of macromarketing from the Journal of Macromarketing. My work has also won best paper awards at Journal of Advertising (2), the Journal of Consumer Affairs, and the Journal of Global Fashion Management.

I have also served regularly as a marketing consultant or expert witness for many firms and clients including General Motors, ADT Alarm Systems, Philip Morris USA, U.S. Smokeless Tobacco, Samsung, Comcast, Viacom, Live Nation, McCann Erickson, Clear Channel Communications, Star Storage, Lamar Outdoor, Magic Media, Inc., Walker Furniture, Eller Media, the Outdoor Advertising Association of America, the International Sign Association, and the Center for Information on Beverage Alcohol (United Kingdom), among others.

My extensive work and decades of experience in the field of signage places me in a unique position to evaluate the issues in the current case. My full curriculum vitae is attached to this report.

Engagement:

Background

I was retained to evaluate and render my expert opinions and observations concerning matters relevant to the case Cozy Inn, Incorporated, d/b/a The Cozy Inn; Stephen Howard v. City of Salina, Kansas (CASE NO. 6:24-cv-01027-TC-ADM). Plaintiffs' counsel has asked me to opine on issues

related to the amended sign ordinance adopted by Salina, Kansas. I am familiar with the facts in this case and have reviewed the relevant documents including the First Amended Complaint, the City of Salina's Sign Code, and Defendant's Response to Plaintiffs' First Set of Interrogatories.

At issue in the case is the City of Salina's action to stop Mr. Steve Howard, owner of Cozy Inn from allowing work on a mural painted by a local artist, Colin Benson, on the side of The Cozy Inn based on its Sign Code. The Cozy Inn is an institution in Salina that has been selling hamburgers for more than 100 years and has achieved an iconic status based on its longevity and winning multiple national awards for its burgers. It now serves more than 45,000 customers per year. The establishment itself is small, at 192 square feet.

Mr. Howard decided he wanted to present a whimsical mural on the side of the building that would include the phrase, "Don't fear the smell. The fun is inside!!" The mural depicts flying saucers that look like burgers and are shown "attacking" the Cozy Inn with a blast of ketchup and mustard. Mr. Benson began painting the mural on November 3. 2023, but a Salani representative ordered that the painting be stopped on November 6, stating that it was a regulated sign. Plaintiffs in the case argue that the Sign Code allows the city to arbitrarily choose which murals it allows and which it does not allow in a way that is unconstitutional based on the 1st and 14th Amendment.

I have specifically been asked to opine on assertions in the report of S. Mark White, AICP, a planner and attorney pertaining to his opinions that:

1. The Sign Code is supported by substantial and compelling interests in the area of urban planning and code administration. Specifically:

   - Comprehensive plan implementation
   - Traffic safety
   - Aesthetics
   - Urban design and travel behavior
   - Public Health and Safety; and

In responding to Mr. White's above assertions, I have formed the following opinions:

1. **Contrary to Mr. White's assertion, there is not support for the notion that City's Sign Code is supported by a compelling government interest based on:**

   i) **Comprehensive plan implementation;**
   ii) **Traffic safety;**
   iii) **Aesthetics**
   iv) **Urban design and travel behavior; or**
   v) **Public health and safety.**

I rely on research, studies, surveys and other evidence for my opinions. Should additional facts arise, I reserve the right to modify my opinions accordingly. I also rely on my background and learning derived from my academic career.

A copy of my curriculum vitae is attached at the end of this report. I am being compensated at a flat rate of $350 per hour in this case and to date have worked 30 hours on this matter. In the previous four years I have been deposed or testified in the following cases:

In the Matter of Certain Soft Projectile Devices, Components Thereof, Ammunition and Products Containing Same. (2023), United States International Trade Commission. Inv. No. 337-TA-1325. Wrote expert report. Deposed.

Guantanemera Cigars Company v. SMCI Holding, et al., United States District Court for the Southern District of Florida. Case No. 1:21-cv-21714-MORENO/GOODMAN. (2023) Wrote expert report. Testified.

ADT LLC v. Safe Home Security Inc et al., United States District Court for the Southern District of Florida. Miami Division. Case No. 1:20-cv-23918 (2022) Wrote expert report. Deposed.

Peloton Interactive, Inc., v. Icon Health & Fitness, United States District Court for the District of Delaware, Case No. 20-1535 (RGA), (2021) Wrote expert report. Deposed.

OPINIONS

1) Contrary to Mr. White's assertion, there is not support for the notion that City's Sign Code is supported by a compelling government interest based on: i) Comprehensive plan implementation; ii) Traffic safety; iii) Aesthetics; iv) Urban design and travel behavior; or v) Public health and safety.

i) Comprehensive plan implementation

Mr. White cites from the Comprehensive plan itself that (p.5.), "(the comprehensive plan is the 'basis or guide for public action to insure a coordinated and harmonious development which will promote the health, safety, morals, order, convenience, prosperity, and general welfare." Yet, Mr. White does not provide evidence that the comprehensive plan is built on scientific evidence that these goals are actually achieved. Indeed, there is no compelling scientific evidence favoring the idea that regulating on-premise signs as prescribed in the plan promotes health and safety, and general welfare (see subsequent sections discussing aesthetics, traffic safety and public health and welfare). While it is true that a desire for shared community identity vs. the need to allow signage that differentiates businesses is often a point of tension in signage regulation, Mr. White's claims on these issues are not substantiated, and ignore important roles played by signage.

Mr. White states (p.4) that, "The Sign Code varies height, size, and design by zoning district. This is a state of the art, and generally accepted technique for controlling sign clutter…" He goes on to assert (pps. 4-5) that "Plaintiff's lawsuit would invite all businesses to completely ignore the Sign Code's area restrictions—at least if the sign is painted—and contribute to sign clutter." In referring to "sign clutter," Mr. White invokes a subjective term and fails to recognize the value of signage to businesses and to the community at large. Indeed, White's reference to "sign clutter" when referring to signs and in support of restrictive codes ignores the marketing

functions of signs—functions that are valuable both to businesses within the community and consumers alike.

In my book titled "On-Premise Signs as Storefront Marketing Devices" published by the U.S. Small Business Administration in cooperation with the Signage Foundation (Taylor, Claus and Claus 2005) four significant roles that on-premise signs play in the marketing program of firms are outlined. These roles are:

- Communicating the location of the business
- Reinforcing advertisements and other marketing variables as part of Integrated Marketing Communications (IMC)
- Branding the site
- Enhancing store image

These functions represent the major roles signage plays for retail businesses and should be taken into account in developing sign codes that contribute to the success of local businesses. In general, signage should not be dismissed as clutter without evidence of it being broadly perceived that way, and Mr. White's casual reference to "sign clutter" are indicative of a willingness to inhibit businesses based on a subjective view of aesthetics (the reasons why aesthetics do not represent a substantial government interest in this case are discussed in section 1-b of this report).

The aforementioned functions are now elaborated on as they collectively play a key role in the success or failure of a business and in informing consumers (Taylor, Sarkees, and Bang 2012).

Communicating the location of the business

Signs serve as important navigational tools that offer information that is aimed to orient individuals in a physical space or in a built environment at a fundamental level (Jourdan, Strauss

and Hunter 2017). As observed by several scholars, (Auffrey and Hildebrandt 2017; Calori and Vanden-Eynden 2015) for many businesses, the most basic function of an on-premise sign is to communicate the location of the business to customers. To serve this purpose effectively, the sign must be both visible to the viewer and conspicuous, meaning that it stands out within the environment in which it exists (Bullough 2018). Taylor and Sarkees (2016) find that for many businesses, the sign is the primary way in which consumers learn where a business is located. Visibility is important for consumers passing directly by the business so that both information on the location and what is sold can be communicated (Berman, Evans, and Chatterjee 2018) and also to induce impulse stops from passersby (Taylor, Sarkees, and Bang 2012). As a result, it is important for planners to acknowledge that on-premise signs do not represent "clutter."

Branding the Site

Signs play an important role in the differentiation of retail businesses. Academic studies that to identifying colors of business are positively perceived by consumers (Bellizzi and Hite 1992; Myers-Levy and Peracchio 1995), as are shapes (Veryzer and Hutchinson 1998), typefaces, and background design elements (Mandel and Johnson 2002) that often are a part of a store's signage and physical appearance. Exterior visual features interact and can affect consumer perceptions and positioning, and thereby brand to the site (Kopp and Langenderfer 2014). In this case, it is Mr. Howard's belief that the bare walls of the Cozy Inn did not reflect the establishment's brand personality and this was his motivation for wanting to have a mural painted. This rationale is consistent with marketing principles related to branding the site of a retailer.

As an example, gas stations are often owned by oil companies, superstores or convenience stores and the brand logo appears on pole signs and pumps. In such cases, the sign's visual appearance links the brand to the business' place of business. In conjunction with these associations, such as a good customer experience, lower prices, or other attributes become affixed to that location. When the exterior appearance and signage for the business is distinctive and memorable, this site branding can help increase desire for a product, decrease price sensitivity, and enhance memory, awareness, loyalty, and brand equity (Keller 2013; Taylor, Claus, and Claus 2005).

Enhancing the Image of the Store or Business

Academic research has long held that retailers need to work to develop and maintain a store image as part of their success (James, Durand, and Dreves 1976; Golden, Albaum, and Zimmer 1987; Bloch and Kamran-Disfani 2018). Signage now only draws attention to a business, but also communicates aspects of the store's atmosphere and image to the consumer (Berman, Evans, and Chatterjee 2018). For example, an elegant jewelry store may want to communicate a prestigious image via expensive and well-designed signage while having an elegant storefront. A convenience store, on the other hand, may want simpler signage that gets across a simple and more down to earth image.

Signage and Integrated Marketing Communications (IMC)

Signage is part of integrated marketing communications (IMC), which views marketing communications holistically (Kitchen et al. 2004; Muñoz-Leiva, Porcu, and Barrio-García 2015). The IMC concept emphasizes that all points of contact a company has with the consumer have an impact on consumer perceptions of a brand and, in turn, affect its value. In this way, people

perceive a company's brand as a result of synthesizing the bundle of messages they receive along with their own experience with the business (Belch and Belch 2018). In this way, impressions of the company are formed by advertising, the store's environment, pricing, and other marketing variables as well as signage (Taylor. Claus and Claus 2005). Signs can play a particularly important role by displaying a logo, symbol or brief message that reinforces other aspects of IMC and, in turn, aids in increasing retail traffic and sales.

Signage plays an important role in informing consumers and performing marketing functions that enhance a business' chance of being profitable and thriving. It is important that sign codes are reflective of this and that signs are not simply dismissed based on a subjective claim that they represent "clutter." While some in a community may perceive signage and competition among retailers to contribute to a community environment that is dynamic and easy to maneuver through, others may see signs as unappealing or clutter causing. This depends on the beholder. The marketing functions of signage should not simply be dismissed and referring to signage as "clutter" is problematic.

ii) The City of Salina's Sign Code does not advance an interest in traffic safety. Evidence from prior research and literature clearly demonstrates that properly constructed and positioned on-premise signs do not represent a traffic safety hazard.

The argument that signs are distracting to motorists and constitute a traffic safety hazard is not supported by scientific evidence. While this claim is sometimes made by critics of signage and public officials engaged in zoning debates, there is a multitude of evidence that indicates that signs that are readable and sufficiently large do not pose a threat to traffic safety (e.g., Schwab 1998; Signage Sourcebook 2003; Taylor, Claus and Claus 2005). Continued research on measures that enhance readability and legibility of signage reinforces the notion that properly

regulated signage does not pose a threat to traffic safety (e.g., Garvey, et al., 2016; Garvey and Klena 2019; Garvey and Klena 2020).

As noted by Richard Schwab, former program manager of the Federal Highway Administration's (FHWA) research on highway visibility and night driving safety, it is only signs that are too small, poorly lit, or inappropriately placed (e.g., blocking a driver's view when making a turn) that might lead to traffic safety issues (c.f. Taylor, Claus and Claus, 2005). Moreover, in recent years, the Federal Highway Administration has gone on record stating that standardized billboards are not distracting to drivers, and, thus, not a traffic safety hazard. In general, the FHWA's reviews of signage and traffic safety have found no conclusive evidence of a link between signs and traffic accidents (Wachtel and Netherton 1980; FHWA 2001; Federal Register 2002; FHWA 2013).

Research evidence as well as common sense point out that signage that is readable and conspicuous avoids situations in which drivers strain to see signs, make quick lane changes across traffic to turn into a parking lot, or become frustrated because they missed a sign they did not see in time. In fact, a large volume of scientific evidence demonstrates that properly constructed and placed signage, meaning signs that are clearly visible and legible and do not block a driver's vision while making a turn, are not a traffic safety hazard. A recent study by Saha, Dumbaugh and Merlin (2020) reviewed prior literature and examined factors of the built environment on traffic safety did not include signage among the analyzed factors, indicative of extant research not showing on-premise signs as being linked to traffic safety.

Several authoritative sources have gone on record stating that signs are not a traffic safety hazard. In an independent study sponsored by the AAA Foundation for Traffic Safety Research,

researchers at the University of North Carolina Highway Safety Research Center explored the causes of approximately 284,000 automobile accidents occurring from 1995 to 1999 (Stutts et al., 2001). The study's goal was to identify sources of distractions for drivers and to determine their relative importance. The report concluded that signs are not significant distractions that lead to highway accidents (Stutts et al., 2001).

In addition, a monograph describing the results of a 100-Car naturalistic study conducted by the Virginia Polytechnic University's Transportation Institute and the National Highway Traffic Safety Administration in order to examine whether various aspects of the environment distracted drivers stated that the findings showed that "Short, brief glances away from the forward roadway for the purpose of scanning the driving environment are safe and actually decrease near-crash/crash risk." Consistent with this finding, the extant literature research suggests that when the difficulty of a driving task increases, drivers focus their attention on the driving task and ignore other stimuli, such as billboards and signs (Johnston and Cole 1976; Lee Olson and DeHart 2004). A University of Miami study on a large sample of individuals conducted in 1971 in which a driving task was simulated and subjects' eye movements were recorded demonstrated that the presence of signs did not have an adverse impact on traffic safety (Morrison and Dainoff 1971).

The Virginia Tech Transportation Institute also conducted a study specifically looking at the impact of billboards on driving behavior. The study found that under actual driving conditions driver performance, speed keeping, and lane maintenance were not measurably impaired by signage. This finding is consistent with earlier evidence that drivers remain attentive to the driving task when encountering signs and do not divert attention from the driving

task to the point where it might affect their safety (Schwab 1998). In a sense, when not directly relevant to the driver, signage becomes part of the background. When it is relevant, drivers have been shown to process the information while not being distracted from the driving function (Schwab 1998; Lee 2005).

A study by Hawkins et al. (2012) examined a large volume of sign and crash data in order to examine whether digital on-premise signs were linked to traffic accidents. The study used data from multiple states obtained from the Highway Safety Information System, which contains a comprehensive database of accident records. The authors concluded (p. viii) that, "The results of this study provide scientifically based data that indicate that the installation of digital on-premise signs does not lead to a statistically significant increase in crashes on major roads."

While a multitude of individual academic studies over the past sixty years have explicitly researched the issue of a possible link between signs and traffic accidents, no conclusive evidence has been found. Some classic studies of static billboards (e.g., Lauer and McGonigle 1955; Blanche 1965; Holahan 1977) show no correlation between billboards and traffic safety. Other studies that found a correlation did not control for numerous other factors that could be responsible for a correlation and, thus, cannot be used to infer a causal relationship (e.g., Rusch 1951; Faustman 1961; Madigan-Hyland 1963). Thus, reviews of academic research have concluded that no evidence exists that billboards cause traffic accidents. As on-premise signs that are properly placed and sized carry the same characteristics as billboards, the same conclusion can be safely applied.

Not only has research demonstrated that properly placed signs are not a safety hazard, but there is also considerable evidence that signs can actually enhance traffic safety (Signage

Sourcebook 2003). For example, well-designed and strategically placed finds can help to relieve boredom and "wake up" a driver or catch their attention when they are becoming tired or less alert (Taylor, Claus and Claus 2005). Additionally, a FHWA study showed that on-premise signs located at high traffic intersections increased traffic safety, provided they met FHWA standards for legibility, conspicuity, readability, and conspicuity (Cirillo et al. 1969). Collectively, these findings suggest that on-premise signs can actually enhance traffic safety by assisting in keeping drivers alert and in finding their way.

In addition to research from scientific academic studies not showing evidence of a link between signage and traffic safety, historic evidence from insurance companies and law enforcement agencies on causes of traffic accidents supports the notion that there is a lack of correlation between on-premise signs and traffic accidents. Indeed, a considerable number of studies from these types of agencies have found that an on-premise sign or billboard causing a traffic accident is an extremely rare event (Wachtel and Netherton 1980; FHWA 2001). Interestingly, there have been cases where signage deficiency has been an issue in tort cases, owing to traffic signs being too small. This is why the FHWA does not allow traffic signs below a certain size (Signage Sourcebook 2003).

In summary, years of research on the topic of traffic safety demonstrates that properly constructed signs not only are not a traffic safety hazard but may actually improve traffic safety in some instances. As such, the advancement of traffic safety is not a valid justification for the City of Salina's Sign Code.

iii. The City of Salina's Sign Code does not advance a general interest in aesthetics. Aesthetics are inherently a matter of opinion, and prior research documents that public opinion toward signage is more positive than negative.

Part of the rationale for City of Salina's Sign Code is that it advances the City's interest in aesthetics. In his report, Mr. White argues (p.7), "Sign clutter is considered unattractive by most planning professionals and the general public." However, Mr. White offers no evidence that the City of Salina's Sign Code actually promotes an interest in aesthetics, and extant evidence from public opinion polls conducted on the aesthetics of billboards and on-premise signage refutes this claim. Additionally, because of the widespread understanding for the need for on-premise signs (even states and municipalities that ban billboards allow on-premise signs), it stands to reason that public opinion towards on-premise signs would be at least as favorable as to billboards.

While it is true that aesthetics can be a point of tension in signage regulation with some people holding different viewpoints on what is visually pleasing (Auffrey et al. 2024), available research evidence on signage consistently documents that the general public is not opposed to either on-premise signs or billboards aesthetic grounds. Contrary to the assertions of industry critics such as Scenic America and other similar groups, public opinion toward on-premise signs is quite positive, and public opinion is actually more favorable than negative towards off-premise signs (billboards). An analysis of data collected by leading market firm Brand Spark for Better Homes and Gardens American Shopper study conducted by Dr. James Kellaris of the University of Cincinnati documents several aspects of public opinion toward on-premise signs (Kellaris 2013). The 2013 sample analyzed was representative of the U.S. at large and included 880 respondents.

One of the key findings of the Kellaris study is that only a small proportion of the public agree that "Smaller signs are generally more attractive than larger signs." In response to this question, only 14.1% of respondents in the 2013 study agreed, while more than twice as many (34.7%) disagreed and many more indicated that they were neutral (Kellaris 2013). This finding is in opposition to the idea that limitations on the size of signs would serve an aesthetic interest as more people indicate that they prefer larger vs. smaller signs on aesthetic grounds.

Another major finding of the Kellaris' analysis is that consumers strongly prefer a variety of signs in business districts to uniformity. In response to the statement that "Variety of signage design within a business district is interesting and appealing," nearly seven in ten (69.5%) agreed, while 26.9% were neutral and just 3.6% disagreed.

A large volume of public opinion polls also reinforces the idea that a majority of the public does not object to signage on aesthetic grounds. A review of fifty major studies conducted over the years, including studies by renowned organizations such as the U.S. Travel Data Center, Louis Harris Polling, University of Michigan Survey Research Center, University of Alabama, Virginia Commonwealth University, Penn, Schoen and Berland, Inc., and Arbitron, among others. Collectively, these studies included more than 16,000 observations that measured public opinion on a variety of issues related to billboards. The Taylor and Franke (2011) study found that only a minority (21%) of the public supports banning billboards in general. Taylor and Franke also found that across polls, 85% of Americans believed that billboards are useful to travelers, 80% believed that billboards create jobs, and 82.2% agree that billboards help businesses attract customers. Additionally, on average, over 83% of those surveyed agreed that billboards are informative. And a majority of those polled (58.2%) agree that billboards are interesting. When asked specifically

about aesthetic issues, the public was evenly split on whether billboards can harm scenic beauty (50.1%), while a minority of respondents agreed that billboards are ugly (43.2%) and annoying (27.8%).

These findings of public opinion toward billboards are indicative of the public at large not having a distaste for signs. As U.S. retailers use the on-premise sign as the basic link to the consumer in 98% of cases, whether to promote impulse purchases, help consumers remember the store and what it sells at its location for future reference, it is clear that consumers value the information conveyed on-premise signs (Signage Sourcebook 2003) . Consumers use on-premise signs for a variety of functions including finding a business, developing an impression of the store and its image and recollecting information stored in memory about the business (Taylor, Sarkees and Bang 2012; Kellaris 2013). There is also broad recognition that signs help businesses build traffic, increase sales, employ people, and allow businesses to contribute to the tax base of a community (Signage Sourcebook 2003; Taylor, Claus and Claus 2005). Moreover, on-premise signs are particularly important to small businesses (see Taylor, Sarkees and Bang (2012)), and the U.S. public broadly supports the right to open a small business.

Overall, public opinion polls on billboards are not supportive of the sweeping claim that signs have a negative impact on the appearance of the community. By substantial majorities, the general public recognizes that billboards create jobs, help businesses, and help consumers. While the public is split to some extent, public opinion on the aesthetics of signs is not negative, and a majority of the public believe that the "pros" of billboards outweigh the "cons."

It should also be noted that there is no evidence that the public generally dislikes painted signs. Academic research does not support the notion that the public likes painted signs any less

than other types of signs. Indeed, many urban communities, including Salina, have developed mural programs that include paintings on walls because they are viewed as aesthetically pleasing, evidence of a substantial segment of the public liking some forms of paintings on buildings (City of East Lansing 2015; City of Tacoma 2015; Prevention Institute 2015). Thus, the City of Salina's content based restriction on on-premise signs does not advance an aesthetic interest.

iv) The City of Salina's Sign Code does not advance a general interest in urban design and travel behavior.

In his report, Mr. White argues (p.8), "While Salina's Downtown is a pedestrian oriented district, a proliferation of oversized painted wall signs along with other inappropriate intrusions into the district would encourage shifts in travel behavior internal to the district. This would, in turn, create pressure for further intrusions, create demand for land consumptive uses such as parking, and discourage the use of public transit." This quote is a central part of Mr. White's contention that the City of Salina's Sign Code advances a general interest in urban design and travel behavior. Yet, Mr. White offers no evidence that allowing painted murals or signs on the side of walls would have any impact on pedestrian vs. vehicular traffic, let alone create demand for land consumptive uses or decrease use of public transportation.

Indeed, it can be argued that the type of painting at issue in this case would be more likely to encourage viewing by pedestrians than motorists. A study conducted by Ewing et al. (2016) found that street art, including the presence of murals, was a factor that was positively correlated with pedestrian traffic. In general, it makes sense that wall paintings would be more likely to be closely viewed by pedestrians as they have time to take in the artwork, as opposed to motorists who are passing by, typically at significant rates of speed unless stopped at an intersection.

In terms of this case, claims that traffic patterns or land usage would be affected based on the content of a painting on the sides of building walls are unsubstantiated. Moreover, there is no scientific evidence that paintings on the side of buildings decrease traffic safety. There is no scientific support for, or reason to believe, that a painting on the side of a building depicting flying hamburgers vs. some other type of scene would make it less safe.

v) The City of Salina's Sign Code does not advance a general interest in public health and safety.

In his report, Mr. White makes the remarkable claim that signs are damaging to public health. Rather than citing valid academic research focused directly on any impact of signs, Mr. White instead references studies broadly focused on "sprawl," "community design," and "urban sprawl." None of the studies cited directly examine the impact of on-premise signs on incidence of people walking or exercising. The proposition that painted walls would lead people to a more sedentary lifestyle would require a very complex research design that is controlled for numerous other factors. Moreover, Mr. White's assertion that "Large signs are one characteristic of sprawling, automobile corridors. In the planning profession, the protection of public health is considered a compelling public interest. Restricting the size and number of signs, including the control of painted wall signs is directly related to this interest," is wholly unsupported by the studies he cites as they did not investigate the impact of signs in general, let alone "large signs."

It is also notable that Mr. White cites a study stating that public murals have been found to have positive impacts on public health. The idea that a difference in the classification of a message contained in the exact same painting (on-premise sign vs. mural) would make a differential impact on public health is wholly unsupported. Again, there is no scientific evidence available supporting

the notion that a painted wall depicting a dove versus a cup of coffee would have any impact on individuals' health.

In terms of "public health," the economic vitality of a community should also be considered as a factor in regulation, but economic impact is ignored. As alluded to earlier, signs play a key role in facilitating the success of a wide variety of businesses by informing consumers and allowing businesses to communicate messages. If inadequate commercial signage exists, this makes it difficult for a business to communicate with consumers, who in most cases are passing a business in an automobile, and the result is often underperformance of the business or even outright failure (U.S. Small Business Administration 2013). The retail sector accounts for sales of more than $7 trillion in 2022, according to new estimates from the U.S. Census Bureau's Annual Retail Trade Survey (U.S. Census Bureau 2024). Thus, it is clear that availability of signage to retail and service businesses is a key facilitating factor to the vitality success of the U.S. economy.

Managers of retail and service businesses are well aware of the sales impact of signage, as evidenced by a survey conducted by Taylor, Sarkees and Bang (2012). In this study, 85% of respondents (which included some non-profit organizations and professional services such as doctors in addition to conventional retailers) indicated that they would lose sales if they did not have an on-premise sign and among those businesses indicating that sales would be lost, and the average sales loss was reported to be 34.6%. This is representative of a very substantial economic impact on a community.

In summary, there is no evidence to support the notion that the City of Salina's Sign Code promotes a substantial interest in public health and safety.

9/20/2024

Date

Charles R. Taylor, Ph.D.

REFERENCES

Auffrey, Christopher and Henry Hildebrandt (2017), "Do Motorists See Business Signs? Maybe. Maybe Not. A Study of the Probability that Motorists View On-premise Signs," *Interdisciplinary Journal of Signage and Wayfinding*, 1(2), 100–115.

Auffrey, Christopher, Matthew Isaac, Steven Kopp, Hannah Marriott, Aparna Sundar, Charles Taylor, and Franklin Velasco (2024), "A Stakeholder Approach to the Regulation of On-Premise Signs." *Interdisciplinary Journal of Signage and Wayfinding* 8 (1), 5-22.

Belch, George E. and Michael A. Belch (2018). *Advertising and promotion: An integrated marketing communications perspective*. McGraw Hill.

Bellizzi, Joseph A. and Robert E. Hite (1992). Environmental Color, Consumer Feelings, and Purchase Likelihood," *Psychology & Marketing*, *9*(5), 347–363.

Berman, Barry, Joel Evans, and Patrali Chaterjee (2018), *Retail Management: A Strategic Approach*. 13th ed. New York: MacMillan.

Blanche, Ernest E. (1965), "The Roadside Distraction," *Traffic Safety*, 65 (11), 24-25.

Bloch, Peter H. and O. Kamran-Disfani (2018). A Framework for Studying the Impact of Outdoor Atmospherics in Retailing," *AMS Review*, 8 (3/4), 195–213.

Bullough, John, (2017), Factors Affecting Sign Visibility, Conspicuity, and Legibility: Review and Annotated Bibliography. *Interdisciplinary Journal of Signage and Wayfinding*, *1*(2), 2–25.

Calori, Chris and David Vanden-Eynden (2015), *Signage and Wayfinding Design: A Complete Guide to Creating Environmental Graphic Design systems*. John Wiley and Sons.

Cirillo J.A., S.K. Dietz and R.L. Beatty (1969), *Analysis and Modeling of Relationships between Accidents and the Geometric and Traffic Characteristics of the Interstate System*. Washington: U.S. Printing Office/ Federal Highway Administration.

City of East Lansing (2015), "Urban Mural Project (Crack Art)," https://www.cityofeastlansing.com/411/Urban-Mural-Project-Crack-Art (accessed April 16, 2015).

City of Tacoma (2015), "City of Tacoma, Washington: Murals Project," http://www.cityoftacoma.org/cms/one.aspx?objectId=2026 (accessed April 17, 2015).

Ewing, Reid, Amir Hajrasouliha, Kathryn M. Neckerman, Marnie Purciel-Hill, and William Greene (2016), "Streetscape Features Related to Pedestrian Activity," *Journal of Planning Education and Research* 36 (1), 5-15.

Faustman, D. Jackson (1961), "Study of Relationship between Advertising Signs and Traffic Accidents on U.S. 40 between Vallejo and Davis."

Federal Highway Administration (2001), "Potential Safety Effects of Electronic Billboards on Driver Attention and Distraction," Washington, D.C.: FHWA.

Federal Highway Administration (2013), "Driver Visual Behavior in the Presence of Commercial Electronic Variable Message Signs," available at http://www.fhwa.dot.gov/real_estate/oac/visual_behavior_report/review/cevms2.pdf (accessed April 2, 2015).

Federal Register (2002), U.S. DOT/FHWA Notice of Amended Federal/ State Agreement, 67 (63), 15661-15662.

Garvey, Philip M., and M. Jennifer Klena (2019), "Recommended Mounting Heights for Freestanding On-Premise Signs." *Interdisciplinary Journal of Signage and Wayfinding* 3 (1), 3-15.

Garvey, Philip M., and M. Jennifer Klena (2020), "Parallel-mounted On-premise Letter Height and Sign Size." *Interdisciplinary Journal of Signage and Wayfinding* 4, (1).

Golden, Linda L., Gerald Albaum and Mary Zimmer (1987), "The Numerical Comparative Scale: An Economical Format for Retail Image Measurement," *Journal of Retailing*, 63 (4), 393–410.

Hawkins Jr, H. Gene, P. Kuo, and D. J. Lord (2012), "Statistical Analysis of the Relationship Between On-premise Digital Signage and Traffic Safety," *Signage Foundation, Inc. & Texas Engineering Extension Service* (2012).

James, D. L., Richard Durand and Robert A. Dreves (1976), "Use of a Multi-attribute Attitude Model in a Store Image Study," *Journal of Retailing*, 52 (2), 23–32.

Johnston, A.W. and Barry L. Cole (1976), "Investigations of Distraction by Irrelevant Information," *Australian Road Research*, 6, 3-23.

Jourdan, Dawn, Eric Strauss and M. Hunter (2017), "Sign Code Development Process: Best Practices," *Interdisciplinary Journal of Signage and Wayfinding*, *3*(1), 1–2.

Keller, Kevin Lane, (2013) "The Brand Report Card," *Harvard Business Review*, 78 (January/February), 3-10.

Kellaris, James J. (2013). Additional insights from the BrandSpark / Better Homes and Gardens American Shopper StudyTM: A three-year longitudinal update. In *Signage as Advertising: Proceedings of the National Signage Research and Education Conference*, October 9–10, 2013, Cincinnati. Signage Foundation.

Kitchen, Philip J., Joanne Brignell, Tao Ki and Graham S. Jones (2004), "The Emergence of IMC: A Theoretical Perspective. *Journal of Advertising Research*, *44*(1), 19–30.

Kopp, Steve W. and Jeff Langenderfer (2014), "Protecting Appearance and Atmospherics: Trade Dress as a Component of Retail Strategy," *Journal of Public Policy & Marketing*, 33 (1), 34–48.

Lauer, A. and J.C. McGonagle (1955), "Do Roadsigns Affect Traffic Accidents," *Traffic Quarterly*, 9 (3), 322-329.

Lee, S. E., E. Olsen, and M. DeHart (2004), "Driving Performance in the Presence and Absence of Billboards," Foundation for Outdoor Advertising Research and Education.

Madigan-Hyland, Incorporated (1963), New *York State Thruway: Relationship between Accidents and the Presence of Advertising Devices*. New York City, 1963.

Mandel, Naomi and Eric J. Johnson (2002), "When Web Pages Influence Choice: Effect of Visual Primes on Experts and Novices," *Journal of Consumer Research*, 29 (2), 235–245.

Meyers-Levy, Joan and Laura A. Peracchio (1995). How the Use of Color in Advertising Affects Attitudes: The Influence of Processing Motivation and Cognitive Demands. *Journal of Consumer Research*, 22(2), 121–138.

Morrison, Bruce J. and Marvin J. Dainoff (1971), "Eye Movement Characteristics in Recall of Incidentally Presented Stimuli When Attention is Divided," Oxford, OH: University of Miami.
Prevention Institute (2015), "Philadelphia Mural Arts Program: Philadelphia, PA," http://www.preventioninstitute.org/component/sbxmapper/article/368.html (accessed April 17, 2015).

Muñoz-Leiva, Sergio, Lucia Porcu and Salvadore Barrio-García (2015), "Discovering Prominent Themes in Integrated Marketing Communication Research from 1991 to 2012: A Co-word analytic approach. *International Journal of Advertising*, 34 (4), 678–701.

Rusch, W. (1951), "Highway Accident Rates as Related to Roadside Business and Advertising," *Highway Research Board Bulletin*, 30.

Schwab, Richard N. (1998), *Safety and Human Factors: Design Considerations for On-Premise Commercial Signs*. Sherwood, OR and Alexandria, VA: The Signage Foundation for Communication Excellence Inc. and the International Sign Association.

Saha, Dibakar, Eric Dumbaugh, and Louis A. Merlin (2020), "A Conceptual Framework to Understand the Role of Built Environment on Traffic Safety," *Journal of Safety Research*, 75, 41-50.

Signage Sourcebook: A Signage Handbook (2003), Washington, DC: U.S. Small Business Administration.

Stutts, Jane C., Donald W. Reinfurt, Loren Staplin and Eric Rodgman (2001), "The Role of Driver Distraction in Traffic Accidents," Report prepared for AAA Foundation for Traffic Safety. Chapel Hill, NC: University of North Carolina Highway Research Center.

Taylor, Charles R., Susan Claus and Thomas Claus (2005), *On-Premise Signs as Storefront Marketing Devices and Systems*. Washington DC: U.S. Small Business Administration.

Taylor, Charles R. and George R. Franke (2011), "Public Opinion toward Digital Billboards in the United States: An Analysis of Recent Polls," in *Advances in Advertising Research* (Volume II): Breaking New Ground in Theory and Practice, (Shintaro Okazaki, Ed.). Heidelber, Germany: Gabler.

Taylor, Charles R., Matthew Sarkees and Hae-Kyong Bang (2012), "Understanding the Value of On-Premise Signs as Marketing Devices to Businesses for Legal and Public Policy Purposes," *Journal of Public Policy and Marketing*, 31 (2), 185-194.

Taylor, Charles R. and Matthew Sarkees (2016). Do Bans on Illuminated On-premise Signs Matter? Balancing Environmental Impact with the Impact on Businesses. *International Journal of Advertising*, 35(1), 61–73.

United States Census Bureau (2024), "U.S. Retail Sales Reach $7,040 Billion," (Jan 24), https://www.census.gov/newsroom/press-releases/2024/annual-retail-trade-survey.html#:~:text=JAN.,Retail%20Trade%20Survey%20(ARTS).

Veryzer, Robert W. and J. Wesley Hutchinson (1998), "The Influence of Unity and Prototypicality on Aesthetic Responses to New Product Designs,". *Journal of Consumer Research*, 24 (4), 374–394.

Wachtel, Jerry and Ross Netherton (1980), "Safety and Environmental Design Considerations in the Use of Commercial Electronic Variable-Message Signs," Report No. FHWA/RD-080/051. Washington: Federal Highway Administration.

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EDUCATION

1992	Ph.D. in Marketing, Michigan State University, East Lansing, MI.
1987	M.B.A., Michigan State University, East Lansing, MI.
1984	B.G.S., University of Michigan, Ann Arbor, MI.

ACADEMIC EMPLOYMENT

2004- present	John A. Murphy Endowed Chair in Marketing, Villanova University and Senior Research Fellow, Center for Marketing and Public Policy Research
2007 (Fall)	Visiting Distinguished Professor, Ludwig Maximilians University, Munich Germany
2004-2016	Professor, IIE & Global MBA Program, Korea University, Seoul, Korea
2000 - Present	Professor of Marketing, Villanova University
1998 - 1999	Associate Professor of Marketing, Villanova University
1992 - 1997	Assistant Professor of Marketing, Villanova University Courses Taught: Advertising (MBA), Branding (MBA), International Marketing (MBA and Undergraduate), Strategic Marketing Management (MBA), Principles of Marketing (Undergraduate).
1988 - 1992	Associate Instructor and Research Assistant, Michigan State University Courses Taught: International Marketing, Marketing Strategy, Retailing

RESEARCH INTERESTS

Advertising, Branding, and Integrated Marketing Communications - Advertising effects research; Online product reviews; Super Bowl and big event advertising; Consumer behavior and decision making; Digital advertising; Branding and equity; Outdoor advertising and on-premise signage

Marketing and Public Policy Issues Related to Advertising and Consumer Behavior - Consumer decision making, Consumer privacy; Advertising regulation; Digital advertising effectiveness; commerce; Tobacco and alcohol marketing; Pharmaceutical marketing; Trademark issues.

Global Advertising and Marketing - Marketing and advertising in Asia and Europe; International marketing and public policy issues including: "Made in" labeling and its effects; Factors involved on foreign market entry mode choice; Methodological issues, including techniques for enhancing data equivalence, comparability, and reliability; Advertising effects in diverse cultures.

INDUSTRY EXPERIENCE/ CONSULTING

Consulting clients have included Peloton, ADT Alarm Systems, LLC, General Motors, GNC Holdings, Inc., Next-Gen, Inc., Swedish Match, Inc., Philip Morris USA, Samsung Electronics, Swedish Match, Inc., Live Nation, Inc., Walker Furniture, McCann Erickson Worldwide, Clear Channel Communications, Infinity Broadcasting, ClubCom Media, Inc., Magic Media, Inc., Eller Media, Centre for Information on Beverage Alcohol (London), Lamar Outdoor, Interstate Outdoor, Craig Realty, Borden Park, L.P., Dechert L.L.P., Greenberg Trauig, L.L.P., Sussman Godfrey, L.L.P., Arnold and Porter L.L.P., Winston & Strawn, Brown Rudnick, L.L.P., Mattioni and Associates, The Rossbacher Firm, The International Sign Association, The Signage Foundation for Communication Excellence, M of Toms River, Outdoor Advertising Association of America, Missouri Outdoor Advertising Association, Texas Outdoor Advertising Association. Held positions with R.L. Polk and Company, and General Motors prior to entering academia.

MEDIA COMMENTATOR

Commentator in numerous media outlet on advertising and other marketing and branding issues. Senior contributor for Forbes.com. Frequently quoted in outlets such as the Associated Press, MSNBC television, Fox television, NBC television, CBS television, Cheddar TV, CBS.com, ABC.com, Reuters, Forbes, Business Week, the Wall Street Journal, the New York Times, USA Today, Arirang Television, the Washington Post, the Philadelphia Inquirer, San Francisco Examiner, the Los Angeles Times, Advertising Age, Brandweek, Adweek, Variety, Mashable, Yahoo.com, Accesshollywood.com, Sportsillustrated.cnn.com, French Foreign Press Association, the Boston Globe, the Dallas Morning News, the New York Post, China Daily.com, and many others.

INVITED SPEECHES

Presentations at several Universities and industry associations. Universities include Harvard, Columbia, Tuck School of Business (Dartmouth), Yonsei University, Korea University, University of Texas at Austin, Rutgers, University of Antwerp (Belgium), University of Amsterdam (Netherlands), University of Munich (Germany), King's College London, Harbin Institute of Technology (China), Seoul National University (Korea), University of Klagenfurt (Austria), University of Madrid (Spain), Masaryk University (Czech Republic), Shanghai Jiao Tong University, East China Normal University, Seoul National University, Ewha Women's University, and Changwon National University. Featured/keynote speaker at meetings of ICORIA (European Advertising Association), Emerging Markets Conference Board, ICAMA (Asian Marketing Association, China Advertising Association, the Korea Advertising Society, International Sign Association, Conference on Corporate and Marketing Communications, the Signage Foundation, Asia Pacific Law Students Association, the Outdoor Advertising Association of America, and the U.S. Transportation Research Board.

REVIEWING AND EDITING

Editor in Chief

International Journal of Advertising (2008 – present, SSCI)

Associate Editor

Journal of Public Policy and Marketing (2006 – 2009, SSCI)

Journal of Advertising (2008 – 2009, SSCI)

Editorial Review Board Member*:*

Journal of Advertising (2003 – present, SSCI); Senior Advisory Board

Journal of Public Policy and Marketing (1997 – present, SSCI)

Journal of Advertising Research (2001-2004 and 2016-present SSCI)

International Journal of Advertising, (2006 – 2008. SSCI)

International Marketing Review, (2005-present, SSCI); Senior Advisory Board

Journal of Business Research (2000 – 2015, SSCI)

Journal of Current Issues and Research in Advertising (2001 - present)

Journal of Consumer Affairs (2002 – present, SSCI)

Psychology and Marketing (1994 – 2022, SSCI)

Journal of International Marketing (2000- present)

Advances in International Marketing (1996 - present)

Journal of Marketing Communications (2006 – present)

Journal of Marketing Theory and Practice (2007 – present); Senior Advisory Board

***Special Issue Editor**:*

European Journal of Marketing, The Janus Face of Customer Service (2020)

Journal of Advertising, Special Issue on Advertising Regulation and Self Regulation, (2008).

International Journal of Advertising, Special Issue on Advertising in Asia Pacific (2008)

Psychology and Marketing, Special Issues on E-Commerce and Mobile Commerce, with Doo Hee Lee (2008).

Advances in International Marketing, Cross-Cultural Buyer Behavior (2007).

Journal of Advertising, Special Issue on International Advertising (2005).

Advances in International Marketing, "New Directions in International Advertising Research," 2002.

Journal of Public Policy and Marketing, Section including best conference papers, 2001.

Psychology and Marketing, "Emerging Issues in Advertising," 2000.

Advances in International Marketing, Special issue on "Marketing in Asia Pacific," 1996.

Journal of Public Policy and Marketing, Section including best conference papers, 1996.

Ad hoc reviewer:

Journal of Marketing
Journal of Marketing Research
International Marketing Review
Journal of International Marketing
Journal of Interactive Marketing
Journal of Services Marketing
Journal of Macromarketing
Journal of Marketing Theory and Practice
Asian Journal of Communication
Sex Roles
Proposal reviewer for the Government of Hong Kong's Competitive Grant program and the United Kingdom's Economic and Social Research Council.

Conference Organization

Academic Excellent Chair, 2024 Global Marketing Conference, Seoul

Academic Excellence Chair, 2019, Global Fashion Management Conference, Paris

Academic Excellence Chair, 2018, Global Marketing Conference at Tokyo

Academic Excellence Chair, 2016 Global Marketing Conference at Hong Kong

Academic Excellence Chair, 2014 Global Marketing Conference at Singapore

Academic Excellence Chair, 2012 Global Marketing Conference at Seoul

Co-Chair, 2010 Global Marketing Conference at Tokyo

Co-Chair, 2008 American Marketing Association Marketing and Public Policy Conference

Co-Chair, 2008 Global Marketing Conference, Shanghai Jiao Tong University, Shanghai, China.

Co-Chair, 2007 American Academy of Advertising Asia Pacific Conference, Korea University, Seoul, Korea

Co-Chair, 2006 Academy of Marketing Science Cultural Perspectives in Marketing Conference.

Co-Chair, 2003 American Academy of Advertising Conference

Co-Chair, 2001 American Academy of Advertising Conference

Co-Chair, 2001 American Marketing Association Marketing and Public Policy Conference

Co-Chair, 1996 American Marketing Association Marketing and Public Policy Conference

Co-Chair, 1992 Joint Conference of the American Marketing Association and Korean Marketing Association

Reviewer for Annual Conferences

American Academy of Advertising Annual Conference
American Marketing Association Summer Educators' Conference
American Marketing Association Winter Educators' Conference
American Marketing Association Public Policy and Marketing Conference
Academy for International Business Conference
Society for Marketing Advances Conference
Academy of Marketing Science Conference

AWARDS AND HONORS

"Measuring Hard Sell and Soft Sell Advertising Appeals," Journal of Advertising, 39 (2), 5-20. Voted as one of the best 15 articles to appear in the 50 year history of Journal of Advertising (reprinted in 50th anniversary issue).

Listed in Research.com's Top Scientists in Business and Management (2022 and 2023).

Keynote Speaker, ICAMA Conference, Jeju, Korea (2022)

Outstanding Paper Award "The Future of Advertising Research: New Directions and Research Needs." Voted best paper to appear in Journal of Marketing Theory and Practice in 2021.

Keynote Speaker, Global Fashion Management Conference 2021

Emerging Markets Conference Board Distinguished Speaker, 2018 (Johannesburg, South Africa), 2019 (Delhi India), 2020 (Llujbiana, Slovenia), 2021 (Puebla, Mexico)

Keynote Speaker, Korean Marketing Association Annual Conference (2020)

Keynote Speaker, ICAMA Conference (2020)

Faculty Speaker, 2014, 2015, 2016, and 2017, Doctoral Consortium, International Conference on Research in Advertising (European Advertising Academy)

Faculty Speaker, 2008, 2011, 2016, and 2017 American Academy of Advertising Doctoral Consortium Emerging Scholars Symposium.

Flemming Hansen Award for Outstanding Lifetime Achievement to Advertising Research, presented by European Advertising Academy, 2017.

Ivan L. Preston Outstanding Contribution to Research Award (for outstanding lifetime contribution to advertising research, presented by American Academy of Advertising), 2012.

Best Paper Award "Measuring Soft-Sell Versus Hard-Sell Advertising Appeals," Selected as best paper to appear in *Journal of Advertising* in 2010.

Chairman of the Executive Board, Academic Advisory Council for Signage Research, 2019-2021 (served a Vice-Chair 2017-2019)

Villanova Outstanding Faculty Research Award 2009 (lifetime achievement)

President, American Academy of Advertising 2005.

Vice President, American Academy of Advertising, 2001.

AWARDS AND HONORS (Cont.)

Treasurer, American Academy of Advertising 2002-2003.

Chairman of the American Academy of Advertising's Research Committee, 1998-2000.

Best Paper Award, "Cigarette Advertising Bans' Effect on Consumption: A Meta Analysis," Journal of Advertising, Selected as best paper to appear in *Journal of Advertising* in 2008.

Best Paper Award, "The EXPERF Scale: A Cross-National Generalized Export Performance Measure," Winner of Hans B. Thorelli Award for Best Paper that Advances International Marketing Theory and Thought in 1998, Journal of International Marketing.

Best Paper Award, "A Comparison of Alternative Paradigms for Describing Economic Development," - Winner of the Charles C. Slater award for the best paper to appear in Journal of Macromarketing in 1994

Best Paper Award, "A Review of the Effects of Cigarette Advertising Bans," 2006 *American Marketing Association Marketing and Public Policy Conference*, Long Beach, CA.

Best Conference Paper Award, "The Financial Impact of Loyalty Programs in the Hotel Industry: A Social Exchange Theory Perspective,"2012 Global Marketing Conference- Seoul.

Finalist, Best Paper Award, *Journal of Advertising*, 2006.

Outstanding Reviewer Award, *Journal of Advertising*, 2004.

Outstanding Reviewer Award, 1999 Society for Marketing Advances Conference.

Who's Who in the World; Who's Who in American Education; Who's Who in the East.

Fulbright Senior Specialist, 2001 (taught class at Masaryk University, Brno, Czech Republic)

Invited Speaker, Marketing and Public Policy Conference Doctoral Consortium, 2002, 2003, 2007, 2009.

Invited Speaker, Society for Marketing Advances Doctoral Consortium, 2002.

Member of Board of Directors, American Marketing Association Marketing and Society Special Interest Group 2000- 2003.

Winner of American Academy of Advertising Competitive Research Fellowship Award, 1994.

"The Effectiveness of Brand Differentiating Strategies in Korean Advertising," Chosen as Best Paper in Advertising Track at the International Academy of Business Disciplines Conference.

AWARDS AND HONORS (Cont.)

Richard D. Irwin Foundation Dissertation Fellowship, 1991.

American Marketing Doctoral Consortium Fellow, 1990, University of Florida.

“Relationships Between Cultural Variations and Differences in Japanese and US Television Advertising,” chosen as Outstanding Paper in the Promotion Track at the 1989 Conference of the Southern Marketing Association.

Member of Beta Gamma Sigma, Michigan State University Chapter.

Member of Phi Beta Phi, Villanova University Chapter.

CONGRESSIONAL TESTIMONY

Charles R. Taylor (2003), "The Importance of the Availability of Billboards to Rural Businesses in America," Testimony to the U.S. House of Representatives Committee on Small Business, Subcommittee on Rural Enterprise, Agriculture and Technology, May 15, 2003.

BOOKS/ EDITED VOLUMES

Lynne Eagle, Stephan Dahl, Patrick DePelsmacker, and Charles R. Taylor (2021), *The SAGE Handbook of Marketing Ethics*, London: Sage.

Marc G. Weinberger, Charles S. Gulas, and Charles R. Taylor (2021), *Humor in Advertising. Classic Perspectives and New Insights*. London: Routledge.

Sukki Yoon, Yung-Kyun Choi, and Charles R. Taylor (2021), *Leveraged Marketing Communications: The Importance of Studying the Transfer of Object-to-Brand Associations*, London: Routledge.

Shu-Chuan Chu, Juran Kim, and Charles R. Taylor (2019), *Electronic Word of Mouth as a Promotional Technique: New Insights from Social Media*. London: Routledge.

Zotos, Yorgos C., Stacy Landreth Grau, and Charles R. Taylor (2018), *Current Research on Gender Issues in Advertising*, London: Routledge.

Marko Sarstedt, Manfred Schwaiger, and Charles R. Taylor (2011), *Measurement and Research Methods in International Marketing*, (S. Zou., Series Editor). London: Elsevier. (special issue of *Advances in International Marketing*).

John C. Kozup, Charles R. Taylor and Ronald Paul Hill (2008), *Proceedings of the 2008 Marketing and Public Policy Conference*. Chicago, IL: American Marketing Association.

Charles R. Taylor and Doo-Hee Lee (2007), Cross-Cultural Buyer Behavior (special issue of *Advances in International Marketing*), London: Elsevier.

Charles R. Taylor, Doo Hee Lee, Robert King and Changjo Yoo (2007), *Proceedings of the 2007 American Academy of Advertising/ Korea Advertising Society Asia Pacific Conference*, Seoul: Dongguk University.

Charles R. Taylor, Susan Claus and Thomas Claus (2005), *The Marketing Functions of Signs: Understanding Signage and Its Impact on the Economy*, Washington: U.S. Small Business Administration.

Charles R. Taylor (2002), *New Directions in International Advertising*, (special issue of Advances in International Marketing). London: Elsevier Science.

Charles R. Taylor (2001), *Proceedings of the American Academy of Advertising Conference*. Villanova, PA: Villanova University.

Ronald Paul Hill and Charles R. Taylor (2001), Proceedings of the 2001 Marketing and Public Policy Conference, Chicago, IL: American Marketing Association.

BOOKS/ EDITED VOLUMES

Charles R. Taylor (1996), *Marketing in Asia Pacific: and Beyond*. Greenwich, CT: JAI Press.

Ronald Paul Hill and Charles R. Taylor (1996), *Proceedings of the 1996 Marketing and Public Policy Conference*. Chicago, IL: American Marketing Association.

Charles R. Taylor, S.W. Kopp, T. Nevett, and Stanley C. Hollander (1991), *Marketing History: It's Many Dimensions: Proceedings of the Fifth Conference on Historical Research in Marketing and Marketing Thought*. East Lansing, MI: Michigan State University Press.

REPRINTED ARTICLES

International Marketing: Modern and Classic Papers (2008), Stanley J. Paliwoda and John K. Ryans (eds.), London, Edward Elgar. Charles R. Taylor and Shintaro Okazaki, "Who Standardizes Advertising More Frequently and Why Do They Do So? A Comparison of U.S. and Japanese Subsidiaries' Advertising Practices in the European Union," from *Journal of International Marketing* (2006).

International Marketing: Modern and Classic Papers (2008), Stanley J. Paliwoda and John K. Ryans (eds.), London, Edward Elgar. Matthew B. Myers, Roger J. Calantone, Thomas J. Page Jr. and Charles R. Taylor, "Academic Insights: An Application of Multiple-Group Causal Models in Assessing Cross-Cultural Measurement Equivalence," from *Journal of International Marketing* (2000).

Readings in Advertising, Society, and Consumer Culture (2007), Roxanne Hovland, Joyce Wolburg, and Eric Haley, Eds. CA: M.E. Sharpe, Inc.: Charles R. Taylor and Barbara B. Stern, "Asian-Americans: Television Advertising and the 'Model Minority' Stereotype," reprinted from *Journal of Advertising* (2006).

BOOK REVIEWS

Taylor, Charles R. (2003), "Review of *Cross-Cultural Survey Methods*," by Janet A. Harkness, Fons J.R. Van de Vijver, and Peter Ph. Mohler, Wiley-Interscience, *Journal of Marketing Research*, 40 (August), 246-247.

Taylor, Charles R. (1994), "Review of *New and Improved: The Story of Mass Marketing in America*," by Richard Tedlow, *Journal of Marketing,* 58 (3), 123-126.

JOURNAL ARTICLES

Taylor, Charles R., Benjamin Borenstein, and Aniruddha Pangarkar (2024), "What, No Logos? Why Some Minimalists Prefer Quiet Luxury," *Psychology & Marketing*, forthcoming.

Auffrey, Christopher, Matthew Isaac, Steven Kopp, Hannah Marriott, Aparna Sundar, Charles Taylor, and Franklin Velasco (2024), "A Stakeholder Approach to the Regulation of On-Premise Signs." *Interdisciplinary Journal of Signage and Wayfinding* 8(1), 5-22.

Milfeld, Tyler, Matthew Pittman and Charles R. Taylor (2024), "Green with Arrogance: Dominant Brands Benefit from Arrogant Appeals," *Journal of Current Issues & Research in Advertising*, 1–23. https://doi.org/10.1080/10641734.2024.2346711.

Cho, Minjung, Eunju Ko, and Charles R. Taylor (2024), "The Use of Non-fungible Tokens (NFTs) as Promotional Devices to Build Brands: An Application of Lovemark Theory." *Journal of Global Fashion Marketing*, forthcoming.

Benjamin E. Borenstein and Charles R. Taylor (2024) "The Effects of Targeted Digital Advertising on Consumer Welfare," *Journal of Strategic Marketing*, 32(3), 317-332.

Rathee, Shelly, Charles R. Taylor and Akash Gupta (2024), "The Appeal of Blurred Imagery: Enhancing Advertising and Brand Attitudes for Luxury Goods," *Journal of Business Research*, 182, 114795.

Cho, Minjung, Eunju Ko, and Charles R. Taylor (2024), "Do Non-fungible Tokens Create Long-Term Value for Luxury Brands? The Effect of NFT Promotions on Customer Equity." *Computers in Human Behavior*, 108347, forthcoming.

Charles R. Taylor, Mahdi Rajabi, Shelly Rathee and Somayeh Zamani (2023) The Impact of Self-Identification with Global Consumer Culture on eWOM Generation: A Test of Global Consumer Culture Theory, *Journal of Marketing Communications*, 1-27. DOI: 10.1080/13527266.2023.2227646.

Tae-Hyun Baek, Jungkyeun Kim, Sukki Yoon, Yung Kyun Choi and Charles R. Taylor (2023), "The COVID-19 Threat and Luxury Advertising." *Journal of Consumer Behaviour*, 22(3), 582–596.

Chen Lou, Charles R. Taylor & Xuan Zhou (2023), "Influencer Marketing on Social Media: How Different Social Media Platforms Afford Influencer–Follower Relation and Drive Advertising Effectiveness," *Journal of Current Issues & Research in Advertising*, 44(1) 60-87.

Dayun Jeong, Eunju Ko, and Charles R. Taylor (2023), "Don't Touch the Merchandise! Factors Associated with Consumer Preference for Contact Free Shopping," *Journal of Business Research*, 154 (January), 113261.

JOURNAL ARTICLES

Marla Royne Stafford & Charles R. Taylor (2022), "Analyzing the Impact of the Leading Articles in the Journal of Advertising from Its First 50 Years: An Integrative Framework," *Journal of Advertising*, 51 (5), 624–642.

Biswajiti Parita, Charles R. Taylor and Abhishek Abhishek (2022), "Introducing Roadblock Advertising in the Digital Context: Does Paying to Limit Competing Messages Pay Off?" *Journal of Advertising Research*," 62 (3), 271-288.

Sophia Mueller, Sandra Diehl, Charles R. Taylor, Ralf Terlutter and Barbara Mueller (2022), "Do CSR Ads with Public Health Messages Pertaining to Covid-19 Actually Help Consumers, Advertisers, and Society? Insights from the United States and Germany" *Journal of Current Issues and Research in Advertising*, 43 (4), 337-359.

Charles R. Taylor (2022), "Academic Research on Signage: Research Directions to Add Value to Stakeholders," 6 (1) *Interdisciplinary Journal of Signage and Wayfinding*, 21-26.

Lars Bergkvist and Charles R. Taylor (2022), "Reviving and Improving Brand Awareness as a Construct in Advertising Research," *Journal of Advertising*, 51, 294-307.

Yuli Zhang, Hyokjin Kwak, Puzakova Marina, and Charles R. Taylor (2021), "Space between Products on Display: The Impact of Interspace on Consumer Estimation of Product Size," *Journal of the Academy of Marketing Science*, 49(6), 1109-1131.

Alexander Mafael, Sascha Raithel, Charles R. Taylor and David W. Stewart (2021), "Measuring the Role of Uniqueness and Consistency to Develop Effective Advertising," *Journal of Advertising*, 50(4), 494-504.

Aniruddah Pangarkar, Paurav Shukla, and Charles R. Taylor (2021), "Minimalism in Consumption: A Typology and Brand Engagement Strategies," *Journal of Business Research,* 127 (April), 167-178.

Charles R. Taylor and Les Carlson (2021), "The Future of Advertising: New Directions and Research Needs," *Journal of Marketing Theory and Practice*, 29(1), 51-62.

Sukki Yoon, Kacy Kim, Ashok K. Lawani, Patrick T. Vargas, and Charles R. Taylor (2021), "Culture and Health Persuasion," *Journal of Current Issues and Research in Advertising*, 42(1), 83-101.

Charles R. Taylor, Philip J. Kitchen, Matthew Sarkees and Christian Lolk (2020), "Addressing the Janus Face of Customer Service: A Typology of New Age Service Failures," *European Journal of Marketing*, 54 (10), 2295-2316.

Yoon-Na Cho and Charles R. Taylor (2020), "The Role of Ambiguity and Skepticism in the Effectiveness of Sustainability Labeling," *Journal of Business Research*, 120 (11) 379-388.

JOURNAL ARTICLES

Yuli Zheng, Hyokjin Kwak, Marina Puzakova, and Charles R. Taylor (2020), "When Distraction May Be a Good Thing: The Role of Distraction in Low-Fit Brand Extension Evaluations," *Psychology and Marketing*, 37 (4), 604-621.

Yoon-Na Cho, Yohan Kim and Charles R. Taylor (2020), "Does Feeling Guilt Facilitate "Green" Purchases: Insights on a Global Issue from a U.S. Consumer Survey," *Advances in International Marketing*, vol. 27, forthcoming.

Seoyoung Kim, Sungkyu Lee, Jong-Ho Lee & Charles R. Taylor (2020) Can Premium Private Labels Compete with Luxury Brands: The Impact of Advertising on Perceived Luxuriousness, *International Journal of Advertising*, 39 (6), 761-782.

Charles R. Taylor, Alexander Mafael, Sascha Raithel, Carissa M. Anthony, and David W. Stewart (2019), "Portrayals of Minorities and Women in Super Bowl Advertising," *Journal of Consumer Affairs*, 51 (4), 1535–1572.

Shintaro Okazaki, Charles R. Taylor, Patrick Vargas, and Jorg Henseler, (2019) "Disasters, Hope, and Globalization: Exploring Self-identification with Global Consumer Culture in Japan," *International Marketing Review*, 36 (5), 726-747.

Eunju Ko, John P. Costello, and Charles R. Taylor (2019), "What is a Luxury Brand? A New Definition and Review of the Literature," *Journal of Business Research*, 99 (9), 405-413

Charles R. Taylor, Yoon-Na Cho, Carissa M. Anthony, and Danielle B. Smith. (2018), "Photoshopping of Models in Advertising: A Review of the Literature and Future Research Agenda." *Journal of Global Fashion Marketing* 9 (4), 379-398.

Aronte M. Bennett, John C. Kozup, and Charles R. Taylor (2018), "Country-of-Origin Effects and Consumer Evaluations of Ads within the Context of Economic Crises," *Journal of Current Issues and Research in Advertising*, 39 (1), 52-56.

Schirmer, Nadine A., Manfred Schwaiger, Charles R. Taylor, and John P. Costello (2018), "Consumer Response to Disclosures in Digitally Retouched Advertisements." *Journal of Public Policy & Marketing*, 37 (1), 131-141.

George R. Franke and Charles R. Taylor (2017), "Public Perceptions of Billboards: A Meta-Analysis," *Journal of Advertising*, 46 (3), 395-410.

Jieun Choi, Charles R. Taylor, and Doo-Hee Lee (2017), "Do Resonant Ads Resonate with Consumers? The Interaction of Wordplay, Regulatory Focus, and Need for Cognition and its Impact on Persuasion," *Journal of Advertising Research*, 57 (1), 82-93.

JOURNAL ARTICLES

Charles R. Taylor & John P. Costello (2017), "What Do We Know About Fashion Advertising? A Review of the Literature and Suggested Research Directions," *Journal of Global Fashion Marketing*, 7 (1), 1-20.

Lars Bergkvist and Charles R. Taylor (2016), "Leveraged Marketing Communications: A Framework for Explaining the Effects of Secondary Brand Associations," *Academy of Marketing Science Review*, 6 (3), 157–175.

Aronté M. Bennett, Stacey Menzel Baker, Samantha Cross, J.P. James, Gregory Bartholomew, Akon E. Ekpo, Geraldine Rosa Henderson, Martina Hutton, Apoorv Khare, Abhijit Roy, Tony Stovall and Charles Ray Taylor (2016), "Omission and Commission as Marketplace Trauma," *Journal of Public Policy and Marketing*, 35 (2), 280-291.

Charles R. Taylor and Matthew Sarkees (2016), "Do Bans on Illuminated On-Premise Signs Matter? Balancing Environmental Impact with the Impact on Businesses," *International Journal of Advertising*, 35 (1), 61-73

Sascha Raithel, Charles R. Taylor, and Stefan Hock (2016), "Are Super Bowl Ads a Super Waste of Money? Examining the Intermediary Roles of Customer-based Brand Equity and Customer Equity Effects," *Journal of Business Research*, 69 (9), 3788-3794.

Jieun Choi, Doo-Hee Lee and Charles R. Taylor (2016), "The Influence of Purchasing Context and Reversibility of Choice on Consumer Responses Toward Personalized Products and Standardized Products," *Psychological Reports*, 18 (2), 510-26

Charles R. Taylor and Shintaro Okazaki (2015), "Do Global Brands Use Similar Executional Styles Across Cultures? A Comparison of U.S. and Japanese Television Advertising," *Journal of Advertising*, 44 (3), 276-288.

Yung Kyun Choi, Sukki Yoon, and Charles R. Taylor (2015), "How Character Presence in Advergames Affects Brand Attitude and Game Performance: A Cross-cultural Comparison," *Journal of Consumer Behaviour*, 14 (6), 357-368.

Juran Kim, Charles R. Taylor, Kyung Hoon Kim, and Ki Hoon Lee (2015), "Measures of Perceived Sustainability," *Journal of Global Scholars of Marketing Science*," 25 (2), 182-193

Yung Kyun Choi and Charles R. Taylor (2014), "How Do 3-Dimensional Images Promote Products on the Internet?" *Journal of Business Research*, 67 (10), 2164-2170.

Johnny JiungYee Lee, Michael L. Capella, Charles R. Taylor, Mi (Meg) Luo and Colin B. Gabler (2014), "The Financial Impact of Loyalty Programs in the Hotel Industry: A Social Exchange Theory Perspective," *Journal of Business Research*, 67 (10), 2139–2146.

JOURNAL ARTICLES

Marina Puzakova, Hyokjin Kwak and Charles R. Taylor (2013), "The Role of Geography of Self in "Filling In" Brand Personality Traits: Consumer Inference of Unobservable Attributes," *Journal of Advertising*, 42 (1), 16-29.

Juran Kim, Ki Hoon Lee and Charles R. Taylor (2013), "Effects of Mobile Direct Experience on Perceived Interactivity and Attitude toward Smartphone Applications," *Journal of Global Scholars of Marketing Science*, 23 (3), 282-296.

Minsun Yeu, Hee-Sook Yoon, Charles R. Taylor and Doo-Hee Lee (2013), "Are Banner Advertisements in Online Games Effective," *Journal of Advertising,* 42 (2/3), 241-250.

Shintaro Okazaki and Charles R. Taylor (2013), "Social Media and International Advertising: Theoretical Challenges and Future Directions," *International Marketing Review*, 30 (1) 56-71.

Charles R. Taylor, Matthew Sarkees and Hae-Kyong Bang (2012), "Understanding the Value of On-Premise Signs as Marketing Devices to Businesses for Legal and Public Policy Purposes," *Journal of Public Policy and Marketing*, 31 (2), 185-194.

Sophie Hieke and Charles R. Taylor (2012), "A Critical Review of the Literature on Nutritional Labeling: Conceptual and Methodological Directions for Future Research," *Journal of Consumer Affairs*, 46 (1), 120-156.

Christian M. Ringle, Marko Sarstedt, Rainer Schlittgen and Charles R. Taylor (2012), "PLS Path Modelling and Evolutionary Segmentation," 66 (9), *Journal of Business Research*, 1318-1324.

Eunju Ko, Charles R. Taylor, Heewon Sung, Jooyeon Lee, Udo Wagner, David Martin-Consuegra Navarro, Fanghua Wang (2012), "Global Marketing Segmentation Usefulness in the Sportswear Industry," *Journal of Business Research*, (65) 11, 1565-1575.

John C. Kozup, Charles R. Taylor, Michael L. Capella, and Jeremy Kees (2012), "Sound Disclosures: Assessing When a Disclosure is Worthwhile," *Journal of Public Policy and Marketing*, 31 (2), 313-322.

Michael L. Capella, Charles R. Taylor and Jeremy Kees (2012), "Tobacco Harm Reduction Advertising in the Presence of a Government Mandated Warning" *Journal of Consumer Affairs*, 46 (2), 235-259.

Charles R. Taylor and C. Luke Bowen (2012), "New Developments for Measuring Return on Investment (ROI) for Internet Advertising: Building Toward a 'Brand Scorecard Approach," *Journal of Advertising and Promotion Research*, 1 (1), 9-38.

Charles R. Taylor, C. Luke Bowen, and Hae-Kyong Bang (2011), "The State of Methodological Practice in International Marketing Research," *Advances in International Marketing*, 22 (1), 143-167.

JOURNAL ARTICLES

John B. Ford, Barbara Mueller, and Charles R. Taylor (2011), "The Tension between Strategy and Execution: Challenges for International Advertising Research," *Journal of Advertising Research*, 51 (1), 27-41.

Sascha Raithel, Sebastian Scharf, Charles R Taylor, Manfred Schwaiger, Lorenz Zimmermann (2011), "Marketing Accountability: Applying Data Envelopment Analysis to Assess the Impact of Advertising Efficiency on Shareholder Value," *Advances in International Marketing*, 22 (1), 115-139.

Karen L. Becker-Olsen, Charles R. Taylor, Ronald Paul Hill, and Goksel Yalcinkaya (2011), "A Cross Cultural Look at Corporate Social Responsibility Marketing Communications in Mexico and the United States: Strategies for Global Brands," *Journal of International Marketing*, 19 (2) 30-44.

Hyun Joung Lee, Doo-Hee Lee, Charles R. Taylor, and Jong-Ho Lee (2011), Do Online Brand Communities Help Build and Maintain Relationships with Consumers? A Network Theory Approach," *Journal of Brand Management*, 19 (3), 213-227.

Hao Zhang, Eunju Ko, and Charles R. Taylor (2011)," Advertising Appeals Strategy: Moderating Effect on the Relationship between Innovation and Customer Equity Drivers in China," *Advances in International Marketing*, 22, 111–136.

Shintaro Okazaki, Barbara Mueller, and Charles R. Taylor (2010), "Measuring Hard Sell and Soft Sell Advertising Appeals," *Journal of Advertising*, 39 (2), 5-20.

Schwaiger, Manfred, Marko Sarstedt and Charles R. Taylor (2010), "Art for the Sake of the Corporation: Audi, BMW Group, DaimlerChrysler, Montblanc, Siemens, and Volkswagen Help Explore the Effect of Sponsorship on Corporate Reputations," *Journal of Advertising Research*, 50 (1), 77-89.

Shintaro Okazaki, Barbara Mueller, and Charles R. Taylor (2010), "Global Consumer Culture Positioning: Testing Perceptions of Soft-Sell and Hard-Sell Advertising Appeals Between U.S. and Japanese Consumers," *Journal of International Marketing*, 18 (2), 20-34.

Herbert Jack Rotfeld and Charles R. Taylor (2009). "The Advertising Regulation and Self-Regulation Issues Ripped from the Headlines with (sometimes missed) Opportunities for Disciplined Multi-disciplinary Research*," Journal of Advertising*, 38 (4), 5-14.

Charles R. Taylor (2009), "Editorial: The Six Principles of Digital Advertising*," International Journal of Advertising*, 28 (3), 411-418.

Michael L. Capella, Charles R. Taylor, Randall C. Campbell, and Lance S. Longwell (2009), "Do Pharmaceutical Marketing Activities Raise Prices? Evidence from Five Major Therapeutic Classes," *Journal of Public Policy and Marketing*, 28 (2), 146-161.

JOURNAL ARTICLES

Mary Anne Raymond, Jong Won Lim, Charles R. Taylor, and Roger Gomes (2009), "Hyundai Motor Company's Paradigm for Success in World Markets," *Journal for Global Business Development*, Volume 1 (9), 27 – 36.

Charles R. Taylor and Michael L. Capella (2008), "A Model of Harm Reduction in the Context of Marketing," *Journal of Public Policy and Marketing*, 27 (2), 187-196.

Charles R. Taylor, Kyung Hoon Kim, Eunju Ko, Myung Hwan Park, Dong Ryul Kim and Hak Il Moon (2008), "Does Having a Market Orientation Lead to Higher Levels of Relationship Commitment and Business Performance for Industrial Robot Sales Engineers? Evidence from the Korean Robotics Industry," *Industrial Marketing Management*, 37 (7), 825-832.

Doo-Hee Lee, Seunghee Im and Charles R. Taylor (2008), "Voluntary Self-Disclosure of Information on the Internet: A Multi-method Study of Motivations and Consequences of Disclosing Information on Blogs," *Psychology and Marketing*, 25 (7) 692-710.

Michael L. Capella, Charles R. Taylor and Cynthia Webster (2008), "Cigarette Advertising Bans' Effect on Consumption: A Meta Analysis," *Journal of Advertising*, 37 (2), 7-18. (Selected as Best Paper to appear in *Journal of Advertising* in 2008)

Shintaro Okazaki and Charles R. Taylor (2008), "What is SMS Advertising and Why Do Multinationals Adopt It? An Empirical Study in European Markets," *Journal of Business Research*, 61 (1), 4-12.

Beibei Dong, Shaoming Zou and Charles R. Taylor (2008), "Factors that Influence Multinational Corporations' Control of Their Operations in Foreign Markets: An Empirical Investigation," *Journal of International Marketing*, 16 (1), 98-119.

Seunghee Im, Doo-Hee Lee, Charles R. Taylor and Catherine D'Orazio (2008), "The Influence of Consumer Self-Disclosure on Web Sites on Advertising Response," *Journal of Interactive Advertising*, 9 (1).

Shintaro Okazaki, Charles R. Taylor and Jonathan Doh (2008), Market Convergence and Advertising Standardization in the European Union, *Journal of World Business*, 43 (1), 384-400.

Eunju Ko, Charles R. Taylor, Udo Wagner, and Hyun-Ah Ji, (2008) "Relationships Among CEO Image, Corporate Image and Employment Brand Value in the Fashion Industry," *Journal of the Global Academy of Marketing Science*, 18 (4), 307-331.

Charles R. Taylor, Michael L. Capella, and John C. Kozup (2007), "Does DTC Advertising Provide Information or Create Market Power? Evidence from the U.S. and New Zealand," *Advances in International Marketing*, 1-30.

JOURNAL ARTICLES

Eunju Ko, Eunyoung Kim, Charles R. Taylor, Kyung Hoon Kim, and Ie Jeong Kang (2007), "Cross-National Market Segmentation in the Fashion Industry: A Study of European, Korean, and US Consumers," *International Marketing Review*, 24 (5), 629-651 .

Manfred Schwaiger, Carsten Renhak, Charles R. Taylor and Hugh M. Cannon (2007), "Can Comparative Advertising be Effective in Germany? A Tale of Two Campaigns," *Journal of Advertising Research*, 47 (1), 2-13.

Stacy Landreth, Georgina Roselli and Charles R. Taylor (2007), "Where's Tamika Catchings? A Content Analysis of Female Athlete Endorsers in Magazine Advertisements," *Journal of Current Issues and Research in Advertising*, 29 (Spring), 55-65.

Koo Won Suh, Charles R. Taylor, and Doo Hee Lee (2007), "A Typology of the Marketing Communications Functions of Web Sites: A Cross-National Comparison, *Advances in International Marketing*, 18 (1), 271-292.

Steven W. Kopp, John C. Kozup, Tracy A. Suter, and Charles R. Taylor (2007), "Protecting the Global Brand in the European Union," *Journal of Euromarketing*, 17 (1), 23-34.

Charles R. Taylor, George R. Franke and Hae-Kyong Bang (2006), "Use and Effectiveness of Billboards: Perspectives from Selective-Perception Theory and Retail-Gravity Models," *Journal of Advertising*, 35 (Winter), 21-34.

Shintaro Okazaki, Charles R. Taylor and Shaoming Zou (2006), "Advertising Standardization's Positive Impact on the Bottom Line: A Model of When and How Standardization Improves Financial and Strategic Performance," *Journal of Advertising*, 35 (Fall), 17-33.

Charles R. Taylor and Shintaro Okazaki (2006), "Who Standardizes Advertising More Frequently and Why Do They Do So? A Comparison of U.S. and Japanese Subsidiaries' Advertising Practices in the European Union," *Journal of International Marketing*, 14 (1), 98-120.

Charles R. Taylor, Stacy Landreth and Hae-Kyong Bang (2005), "Asian Americans in Magazine Advertising: Portrayals of the "Model Minority" *Journal of Macromarketing*, 25 (2), 153-162.

Charles R. Taylor (2005), "How Excessive Restrictions on Signage Backfire," *Journal of Consumer Marketing*, 22 (6), 304-305.

Charles R. Taylor (2005), "Moving International Advertising Research Forward: A New Research Agenda," *Journal of Advertising*, 34 (Winter), 7-16.

Charles R. Taylor, Barry J. Babin and Kyung Hoon Kim (2005), "Marketing to Asian Americans: The Impact of Acculturation and Interpersonal Influence on Ethnocentric Consumer Preferences," *Journal of the Global Academy of Marketing Science*, 15 (3), 187-210.

JOURNAL ARTICLES

Hae-Kyong Bang, Mary Anne Raymond, Charles R. Taylor, and Young Sook Moon (2005), "A Comparison of Service Quality Dimensions Conveyed in Advertisements for Service Providers in the U.S. and Korea: A Content Analysis," *International Marketing Review*, 22 (3), 309-326.

Charles R. Taylor and P. Greg Bonner (2003), "Comment on American Media and the Smoking-related Behaviors of Asian Adolescents." *Journal of Advertising Research*, 43, (December), 419-430.

Shaoming Zou, Charles R. Taylor, and Er Fang (2003), "MNC Control over Foreign Market Ventures: Do Host Governments Still Play a Major Role?" *Advances in International Marketing*, 14, 35-48.

Charles R. Taylor and George R. Franke (2003), "Business Perceptions of Billboards in the U.S. Economy," *Journal of Advertising Research*, (June), 150-161.

Charles R. Taylor, Michael G. Walsh, and Christopher A. Lee (2003), "The Challenge Posed by Product Standards Disputes in International Trade: The U.S./EU Beef Controversy and a Proposed Framework for Resolving Standards Disputes," *Journal of Consumer Affairs*, 37 (1), 101-122.

Charles R. Taylor (2002), "What's Wrong with International Advertising Research?" *Journal of Advertising Research*, 42 (6), 48-54.

Charles R. Taylor and Michael G. Walsh (2002), "Legal Strategies for Protecting Brands From Genericide: Recent Trends in Evidence Weighted in Court Cases," *Journal of Public Policy & Marketing*, 21 (1), 160-167.

Charles R. Taylor, P. Greg Bonner, and Michael Dolezal (2002) "Advertising in the Czech Republic: Czech Perceptions of Effective Advertising and Advertising Clutter," *Advances in International Marketing*, 12, 137-149.

Charles R. Taylor and Chad Johnson (2002), "Research on Standardization vs. Specialization of Advertising in the 1990s: A Review and Directions for Further Research," *Advances in International Marketing*, 12, 45-66.

Charles R. Taylor, Kyung Hoon Kim, Dong Yul Kim, and Hak Il Moon (2002), "Antecedents of Brand Loyalty in South Korean Rice Market," *Journal of the Global Academy of Marketing Science*, 9 (1) 175-188.

Gregory E. Osland, Charles R. Taylor, and Shaoming Zou (2001), "Selecting International Modes of Entry and Expansion," *Marketing Intelligence and Planning*, 19 (3), 153-161.

Charles R. Taylor (2000), "Emerging Issues in Marketing," *Psychology and Marketing*, 17 (6), 441-448.

JOURNAL ARTICLES

Charles R. Taylor, George R. Franke and Michael L. Maynard (2000), "Attitudes Toward Direct Marketing and its Regulation: A Comparison of the United States and Japan," *Journal of Public Policy & Marketing*, 19 (2), 228-237.

Charles R. Taylor and Mary Anne Raymond (2000), "An Analysis of Product Category Restrictions in Advertising in Four East Asian Markets," *International Marketing Review*, 17 (3), 287-304.

Charles R. Taylor, Shaoming Zou, and Gregory E. Osland (2000), "Foreign Market Entry Strategies of Japanese MNCs," *International Marketing Review*, 17 (2), 146-163.

Matthew B. Meyers, Roger J. Calantone, Thomas J. Page, Jr. and Charles R. Taylor (2000), "An Application of Multiple-Group Causal Models in Assessing Cross-Cultural Measurement Equivalence," *Journal of International Marketing*, 8 (4), 108-121.

Alan Shao, Mary Anne Raymond, and Charles R. Taylor (1999), "Shifting Advertising Appeals in Taiwan," *Journal of Advertising Research*, 39 (6), 61-69.

Michael Maynard and Charles R. Taylor, (1999), "Girlish Images Across Cultures: Analyzing Japanese vs. U.S. *Seventeen Magazine* Ads," *Journal of Advertising*, 28 (1), 39-48.

Charles R. Taylor and Glenn S. Omura (1999), "A Political Economy Interpretation of the Economic Growth and Subsequent Crisis in the Republic of Korea," *Journal of Global Focus*, 11 (4), 49-62.

Shaoming Zou, Charles R. Taylor, and Gregory E. Osland, (1998) "The EXPERF Scale: A Cross-National Generalized Export Performance Measure," *Journal of International Marketing*, 6(3), 37-58.

Charles R. Taylor, Shaoming Zou, and Gregory Osland (1998), "International Market Entry Mode Choice By U.S. and Japanese Firms: A Test of Transaction Cost Economics Theory," *Thunderbird International Business Review*, 40 (4), 389-412.

Charles R. Taylor and Hae-Kyong Bang (1997), "Portrayals of Latinos in Magazine Advertising," *Journalism and Mass Communication Quarterly*, 74 (2), 285-303.

Charles R. Taylor and Barbara B. Stern (1997), "Asian-Americans: Television Advertising and the 'Model Minority' Stereotype," *Journal of Advertising*, 26 (2), 1-15.

Charles R. Taylor, R. Dale Wilson, and Gordon E. Miracle (1997), "The Impact of Information Level Strategies on the Effectiveness of Korean vs. U.S. Television Commercials," *Journal of Advertising*, 26 (1), 1-18.

JOURNAL ARTICLES

Charles R. Taylor (1997), "A Technology Whose Time Has Come or The Same Old Litter on a Stick? An Analysis of Changeable Message Billboards," *Journal of Public Policy & Marketing*, 16 (Spring), 179-186.

Charles R. Taylor, Shaoming Zou and Aysegul Ozsomer (1996), "Advertising and Its Effect on Industrial Concentration: A Contingency Perspective," *Journal of Current Issues and Research in Advertising*, 18 (Spring), 35-44.

Charles R. Taylor and Gordon E. Miracle (1996), "Foreign Elements in Korean and U.S. Television Advertising," *Advances in International Marketing*, 7, 175-195.

Michael Maynard and Charles R. Taylor (1996), "A Comparative Analysis of Japanese and U.S. Attitudes toward Direct Marketing," *Journal of Direct Marketing*, 10 (1), 34-44.

Charles R. Taylor and Glenn S. Omura (1995), "Analyzing Economic Development in The Republic of Korea: An Evaluation of Paradigms of Marketing and Economic Development," *Journal of Macromarketing*, 15 (2), 66-91.

Charles R. Taylor, Ju Yung Lee, and Barbara B. Stern (1995), "Portrayals of African, Hispanic, and Asian Americans in Magazine Advertising," *American Behavioral Scientist*, 38 (4), 608-621.

Charles R. Taylor and Weih Chang (1995), "The History of Outdoor Advertising Regulation in the United States," *Journal of Macromarketing*, 15 (1), 47-59.

Charles R. Taylor and Ju Yung Lee (1994), "Not in Vogue: Portrayals of Asian Americans in Magazine Advertising." *Journal of Public Policy & Marketing*, 13 (2), 239-245.

Charles R. Taylor, Gordon E. Miracle, and R. Dale Wilson (1994), "The Impact of Brand Differentiating Messages on Effectiveness in Korean Advertising," *Journal of International Marketing*, 2 (4), 31-52.

Charles R. Taylor and John C. Taylor (1994) "Regulatory Issues in Outdoor Advertising: A Content Analysis of Billboards," *Journal of Public Policy & Marketing*, 13 (Spring), 97-107.

Steve W. Kopp and Charles R. Taylor (1994), "Games, Contests, Sweepstakes, and Lotteries: Prize Promotion and Public Policy," *Research in Marketing*, 12, (Fall), 151-166.

Charles R. Taylor and Glenn S. Omura (1994), "A Comparison of Alternative Paradigms for Describing Economic Development," *Journal of Macromarketing*, 14 (2), 6-20.

Gordon E. Miracle, Charles R. Taylor, and Kyu Yeol Chang (1992), "Culture and Advertising Executions: A Comparison of Selected Characteristics of Japanese and US Television Commercials," *Journal of International Consumer Marketing*, 4 (4), 89-113.

JOURNAL ARTICLES

Gordon E. Miracle, Kyu Yeol Chang, and Charles R. Taylor (1992) "Culture and Advertising Executions: A Comparison of Selected Characteristics of Korean and US Television Commercials," *International Marketing Review*, 9 (4), 5-17.

Jay L. Laughlin and Charles R. Taylor (1991), "An Approach to Industrial Market Segmentation," *Industrial Marketing Management*, 20 (2), 127-136.

Charles R. Taylor and Steve W. Kopp (1991), "Games, Contest, and Sweepstakes Run Afoul: A State of Legal Disorder," *Journal of Public Policy & Marketing*, 10 (1), 199-213.

BOOK CHAPTERS

Mueller, Sophia, Charles R. Taylor and Barbara Mueller (2022), "Managing Change Related to Consumer Privacy Laws: Targeting and Personal Data Use in a More Regulated Environment." In: Karmasin, M., Diehl, S., Koinig, I. (eds) Media and Change Management. Springer, Cham. https://doi.org/10.1007/978-3-030-86680-8_15

Lynne Eagle, Stephan Dahl, Patrick DePelsmacker, and Charles R. Taylor (2021), "Introduction to Marketing Ethics," in Sage Handbook of Marketing Ethics, Lynne Eagle, Stephan Dahl, Patrick DePelsmacker, and Charles R. Taylor, eds., 3-19.

Charles R Taylor and Mivena Pantequi (2021), "Religious and Cross-Cultural Perspectives on Marketing Ethics," in *Sage Handbook of Marketing Ethics*, Lynne Eagle, Stephan Dahl, Patrick DePelsmacker, and Charles R. Taylor, eds., 43-57.

Christian Lolk and Charles R. Taylor (2021), "Pharmaceutical Marketing Ethics," in *Sage Handbook of Marketing Ethics*, Lynne Eagle, Stephan Dahl, Patrick DePelsmacker, and Charles R. Taylor, eds., 326-338.

Charles R. Taylor, Shintaro Okazaki, and Barbara Mueller, (2019), "Theory Advancement in International Advertising: Drawing on Theories from Strategic Management and International Business," in Advertising Theory, 2nd ed. (S. Rodgers and E. Thorson, eds.). New York: Routledge.

Charles R. Taylor (2018), "How Does Your Advertising Affect Consumers?" in Mapping Out Marketing: Navigating Lessons from the Ivory Trenches, Ronald Paul Hill, Catherine Mary Lamberton and Jennifer Swartz (eds.), London: Routledge.

Charles R. Taylor and John P. Costello (2017), "International Digital Advertising: Lessons from Around the World,"in *Digital Advertising: Theory and Research* (3rd ed.). Shelly Rodgers and Esther Thorson (eds.), New York: Routlege. 345-361.

Charles R. Taylor and John P. Costello (2017), "Corporate Social Responsibility and the Portrayal of Minority Groups in Advertising," in *Handbook of Integrated Corporate Social Responsibility Communication*. Sandra Diehl, et al. (eds.). Springer International Publishing, 361-375.

Charles R. Taylor, C. Luke Bowen and Hoin Ryu (2014), "Corporate Social Responsibility: A Look at Eastern Nations," in *Handbook of Marketing and Corporate Social Responsibility*. (Ronald P. Hill and Ryan Langan, eds.), 234-251.

Charles R. Taylor and John B. Ford (2014), "Research Methods for International Advertising Studies: A Practical Guide," in *The Handbook of International Advertising Research*, (Hong Cheng, ed.), New York: John Wiley and Sons, 32-47.

BOOK CHAPTERS

Barbara Mueller and Charles R. Taylor (2013), "Convergence in Global Markets: The Great Standardization vs. Localization Debate is Finally Put to Rest," in *Media Convergence and Management*, Sandra Diehl and Matthias Karmasin (eds.), Springer, 89-106.

Charles R. Taylor (2013), "Seven Simple Rules to Better Customer Service," in *The Dominant Influence of Marketing in the 21st Century: The Marketing Leviathan*. (Philip Kitchen, ed.), New York: Palgrave McMillan.

Michael L. Capella and Charles R. Taylor (2013), "Pharmaceutical DTC Advertising Provides Valuable Information to Health-care Consumers," in *Advertising and Society: An Introduction*. (Carol J. Pardun, ed.), 146-153.

Charles R. Taylor and C. Luke Bowen (2012), "Best Practices for Cross-Cultural Advertising Research: Are the Rules Being Followed?" in *Handbook of Research on International Advertising*. (Shintaro Okazaki, ed.). London: Edward Elgar.

Charles R. Taylor, Shintaro Okazaki, and Barbara Mueller, (2011), "Theory Advancement in International Advertising: Drawing on Theories from Strategic Management and International Business," in *Advertising Theory*, (S. Rodgers and E. Thorson, eds.). New York: Routledge.

Charles R. Taylor and George R. Franke (2011), "Public Opinion Toward Digital Billboards in the United States: An Analysis of Recent Polls," in *Advances in Advertising Research* (Volume II): Breaking New Ground in Theory and Practice, (Shintaro Okazaki, ed.). Heidelber, Germany: Gabler.

Charles R. Taylor (2011), "The Role of Signage in Marketing: Outdoor Advertising, Out-of home Media, and On-Premise Signs," in *Wiley International Encyclopedia of Marketing: Advertising and Integrated Marketing Communications*, (J.N, Sheth, N.K. Malholtra, M.A. Belch, and G.E.Belch, eds.), West Sussex, UK: Wiley, 197-202.

Charles R. Taylor (2011), "Standardization/Adaptation of International Marketing Strategy," in *Wiley International Encyclopedia of Marketing: Advertising and Integrated Marketing Communications*, (J.N, Sheth, N.K. Malholtra, D.C. Bello, and D.A..Griffiths, eds.), West Sussex, UK: Wiley, 97-102.

Charles R. Taylor (2006), "The Future of International Advertising Research: Suggestions for Moving the Discipline Forward," *International Advertising and Communication: Current Insights and Empirical Findings*, (Sandra Diehl and Ralf Terlutter (eds.), Frankfurt, Germany: Forschungsgruppe Konsum und Verhalten, 491-506.

Shintaro Okazaki and Charles R. Taylor (2006), "Antecedents and Consequences of Advertising Standardization: A Conceptual Model and Research Propositions, *International Advertising and Communication: Current Insights and Empirical Findings*,(Sandra Diehl and Ralf Turlutter (eds.), Frankfurt, Germany: Forschungsgruppe Konsum und Verhalten, 439-454.

BOOK CHAPTERS

Shaoming Zou, Charles R. Taylor, and S. Tamer Cavusgil (2003), "The Political Economy Explanation of International Market Entry Mode Choice: An Exploratory Study," *Handbook of Marketing Research*, Subhash Jain, ed., Cornwall, UK: MPG Books, 134-147.

Michael L. Capella and Charles R. Taylor (2013), "Pharmaceutical DTC Advertising Provides Valuable Information to Health-care Consumers," in Advertising and Society: An Introduction. (Carol J. Pardun, ed.), 146-153.

Charles R. Taylor, Gordon E. Miracle, and Kyu Yeol Chang (1994), "The Difficulty of Standardizing International Advertising: Some Propositions and Evidence from Japanese, Korean, and U.S. Television Advertising. *Global and Multinational Advertising*, Basil Englis, ed., Hillsdale, NJ: Lawrence Erlbaum, 171-191.

CONFERENCE PROCEEDINGS

Cho, Minjung., Eunju Ko and Charles R. Taylor (2023) The Effect of NFT Marketing Activities on Customer Equity and Satisfaction Regarding Luxury Brands. Proceedings of the Global Marketing Conference, Seoul, Korea.

Charles R. Taylor (2023) "Major Research Needs and Common Pitfalls in Publishing Advertising and Society Research, Proceedings of the American Academy of Advertising, p.73.

Chen Lou, Charles R. Taylor and Xuan Zhou (2022), Context is the New King: The Role of Different Social Media Platforms in Influencer-Follower Relation and Influencer Advertising Effectiveness, Proceedings of the 2022 Annual Conference of the American Academy of Advertising, p.51.

Sophia Mueller, Charles R. Taylor, Barbara Mueller, Sandra Diehl and Ralf Terlutter (2021) Covid-19 Advertising: Are Corporate Social Responsibility Appeals Beneficial to Consumers? Proceedings of the International Conference on Research in Advertising.

Louisa Ha, Yang Yang, Liselot Hudders, Steffi De Jans, Chen Lou, Eva A. van Reijmersdal, Tatiana Domingues-Aguiar, Charles Ray Taylor, Yoon-Na Cho, and Mivena Panteqi (2021), The New Rich and Famous: The Status Quo of Research in Influence Advertising, Theoretical Implications and Opportunities. Proceedings of the Annual Conference of the American Academy of Advertising.

Dayun Jeong, Eunju Ko, and Charles R. Taylor (2020), "A New Perspective on Digital Well-Being and Distancing Behavior," *Proceedings of the Global Marketing Conference*, Seoul, Korea.

Yoon-Na Cho, Mivena Panteqi, and Charles Taylor (2020), "Do Instagram Influencers Need to be Perfect? The Changing Role of Social Norms on the Effectiveness of Influencers," *Proceedings of the Global Marketing Conference*, Seoul, Korea.

Yoon-Na Cho and Charles R. Taylor, (2018), "The Role of Ambiguity in the Effectiveness of Sustainability Labeling," Proceedings of the 2018 Global Marketing Conference at Tokyo, 223-224

Bradley James Wilson, David Roca, Charles R. Taylor and Camilo Villegas (2018), "The Dark Side of the Cannes Awards: 'Truchos' or Fake Ads as Seen by Colombian Creative Agency Staff," *Proceedings of the 2018 ICORIA Conference*, Valencia, Spain.

Hyerinne Hahn, Jong-Ho Lee, Charles R. Taylor, and Jung Min Jang (2017), How Do the Characteristics of Premium Private Label Affect Perceived Luxuriousness? The Moderating Role of Change Seeking, Price Consciousness and Vulnerability. *Proceedings of the 2017 Mystique of Luxury Brands Conference*, Seoul, Korea.

Katharina Ninaus, Sandra Diehl, Charles R. Taylor and Ralf Terlutter (2017), "Always-On? Persuading Technology Users To Disconnect From Work: The Effects Of Message Frame, Regulatory Focus And Self Efficacy On The Effectiveness Of Health Messages," *Proceedings of the 2017 International Conference on Research in Advertisin*g, Ghent, Belgium.

Seoyoung Kim, Sungkyu Lee, Jong-Ho Lee, and Charles R. Taylor (2017), "Advertising's Influence on Perceived Luxuriousness of a Premium Private Label," *Proceedings of the Global Fashion Marketing Conference of the of Global Alliance of Marketing and Management Associations*. Vienna, Austria.

Nadine Schirmer, Manfred Schwaiger, Charles R. Taylor and John P. Costello. (2016), "Consumer Response to Disclaimers in Digitally Retouched Advertisements," Proceedings of 2016 Global Marketing Conference, Hong Kong. Seoul: Global Alliance of Management and Marketing Scholars.

Seoyoung Kim, Sungkyu Lee, Jong-Ho, and Charles R. Taylor (2016) "Drivers of Perceived Luxuriousness of a Premium Private Label Product," *Proceedings of 2016 Global Marketing Conference, Hong Kong*. Seoul: Global Alliance of Management and Marketing Scholars.

Charles R. Taylor (2016) "How Much Should Teaching be Adapted to Local Markets," Proceedings of the American Academy of Advertising Annual Conference, Seattle, WA. 184-185.

Charles R. Taylor, John P. Costello and Eunju Ko. (2015), The State of Knowledge on Luxury Brand Marketing: A Review of the Literature," *Proceedings of the Global Fashion Marketing Conference of Global Alliance of Marketing and Management Associations*, Florence, Italy.

Antigone G. Kyrousi, Charles R. Taylor and George G. Panigyrakis (2015), "That Other Woman: The Evolved Mechanism of Female Competition and Advertising Portrayals of Women in Decorative Roles," *Proceedings of the 2015 International Conference on Research in Advertising*, London, England.

Sascha Raithel, Charles R. Taylor & Stefan (2014), "Are Super Bowl Ads a Super Waste of Money? The Intermediary Role of Customer Equity and Brand Equity on Stock Price." *Proceedings of the Global Marketing Conference of the Global Alliance of Marketing and Management Associations*, 5(1).

Juran Kim, Charles R.Taylor, and Kyung Hoon Kim. (2014), "Measures of Perceived Sustainability," *Proceedings of the Global Marketing Conference of the Global Alliance of Marketing and Management Associations* 4(1).

Charles R. Taylor and Shintaro Okazaki (2013) "Culture and Advertising Executions Revisited," *Proceedings of the 2013 International Conference on Research in Advertising*, Zagreb, Croatia.

Taylor, Charles R. (2012), "The Future of Advertising is Solid as a BRIC," *Proceedings of the American Academy of Advertising Annual Conference*, Myrtle Beach, SC. "

Johnny Jiung Lee, Michael L. Capella, Charles R. Taylor, Mi Luo and Colin Gabler (2012), "The Financial Impact of Loyalty Programs in the Hotel Industry: A Social Exchange Theory Perspective," *Proceedings of the 2012 Global Marketing Conference at Seoul*.

Yung Kyun Choi and Charles R. Taylor (2012), "Persuasive Effects of 3D Advertising: Role of Product Type, Need for Touch, and Mental Imagery," *Proceedings of the 2012 Global Marketing Conference at Seoul.*

Yung Kyun Choi, Sukki Yoon, and Charles R. Taylor (2011), Spokes-character Effects in Advergaming: The Influence of Character Presence, Product Type, and National Culture on Consumers' Brand Evaluation and Performance," *Proceedings of the American Academy of Advertising Conference*, p.114

Charles R. Taylor and Michael L. Capella (2010), "Measuring the Effects of Marketing Smokeless Tobacco as Harm Reduction," *Proceedings of the 2010 Global Marketing Conference at Tokyo.*

Seunghee Im, Doo-Hee Lee, Charles R. Taylor and Jinkyung Goo (2010), "Cultural Differences in Emotional Advertising," *Proceedings of the 2010 Global Marketing Conference at Tokyo.*

Christian Ringle, Marko Sarstedt, Rainer Schlitginn, and Charles R. Taylor (2010) "Using Genetic Algorithm Segmentation in PLS Path Modeling: Addressing Heterogeneity Assumptions," *Proceedings of the 2010 Global Marketing Conference at Tokyo.*

Charles R. Taylor (2010), "Public Opinion toward Digital Billboards in the United States: An Analysis of Recent Polls," *Proceedings of the 9th International Conference on Research in Advertising*, Madrid, Spain: European Academy of Advertising.

Sophie Hieke and Charles R. Taylor (2010), "An Empirical Study on the Effectiveness of Nutritional Labelling in Germany," *Proceedings of the American Marketing Association's Marketing and Public Policy Conference*, Chicago: American Marketing Association, 28-29.

Charles R. Taylor and Peter Neijens (2009). "Trends in European Advertising: Cross Media Campaigns, Advertising during Events, Brand Placement, Advertising Strategies in the New EU Member States and Emotional Brand Experiences," *Proceedings of the 2009 Conference of the American Academy of Advertising*, Cincinatti, Ohio.

Charles R. Taylor et al. (2008), "The View from Europe: Insights on Cutting Edge Issues in Europe." *Proceedings of the American Academy of Advertising Conference*, San Mateo, CA, forthcoming.

Charles R. Taylor, et al. (2008), "The Influence of Consumer's Self-Disclosure on Advertising Response." *Proceedings of the Global Marketing Conference,* Shanghai: Korean Academy of Marketing Science.

Charles R. Taylor, et al. (2008), "Examination of Smart Clothing Attributes, Perceived Risk and Intention to Adopt between Two Cultural Groups." *Proceedings of the Global Marketing Conference,* Shanghai: Korean Academy of Marketing Science.

Charles R. Taylor, et al. (2008), "Segmentation and Targeting Sportswear Consumers in Global Markets." *Proceedings of the Global Marketing Conference.* Shanghai: Korean Academy of Marketing Science.

Manfred Schwaiger, Marko Sarstedt, Charles R. Taylor (2008), "Long-Term Effects of Culture Sponsoring on Corporate Reputation – An Experimental Study". *Proceedings of the Global Marketing Conference,* Shanghai: Korean Academy of Marketing Science.

Michael L. Capella, Charles R. Taylor, and Randall Campbell (2008), "Does DTC Advertising Raise the Price of Sleeping Pills? The Impact of Pharmaceutical Advertising on Price Sensitivity," *Proceedings of the American Academy of Advertising Conference*, San Mateo, CA, 219-225.

Charles R. Taylor (2007), "Recent Trends in International Advertising Research: Current State of Knowledge and Where We Need to Go," *Proceedings of the 2007 Conference of the American Academy of Advertising.*

Koo-Won Suh, Doo-Hee Lee, and Charles R. Taylor (2007), "Dimensions of Advertising Creativity," Proceedings of the AAA/ KAS Asia Pacific Conference, Korea University. Seoul: Korea Advertising Society.

Charles R. Taylor and Changjo Yoo (2007), "Special Session on Social Responsibility of Tobacco Firms." *Proceedings of the AAA/ KAS Asia Pacific Conference, Korea University*. Seoul: Korea Advertising Society.

Charles R. Taylor, et al. (2006), "Impact of Nationality and Fashion Lifestyle on Attitudes toward Advertising and Brand." *Proceedings of the Cultural Perspectives in Marketing Conference,* Academy of Marketing Science Korean Academy of Marketing Science.

Charles R. Taylor, et al. (2006), "Relationship between Marketing Orientation and Business Performance of Sales Engineers of Industrial Robots." *Proceedings of the Cultural Perspectives in Marketing Conference,* Academy of Marketing Science Korean Academy of Marketing Science.

Michael L. Capella and Charles R. Taylor (2006), "A Review of the Effect of Cigarette Advertising Bans," *Proceedings of the American Marketing Association's Marketing and Public Policy Conference*, Chicago: American Marketing Association, pps. 188-189.

Charles R. Taylor (2005), "Moving International Advertising Research Forward: A New Research Agenda," *Proceedings of the 4th International Conference on Research in Advertising*, Sandra Diehl. Ralf Terlutter, and Peter Weinberg (eds.), Saarbrucken, Germany: Saarland University, p.14.

Shintaro Okazaki and Charles R. Taylor (2005), "Antecedents and Consequences of Advertising Standardization: A Conceptual Model and Research Propositions," *Proceedings of the 4th International Conference on Research in Advertising*, Sandra Diehl. Ralf Terlutter, and Peter Weinberg (eds.), Saarbrucken, Germany: Saarland University, pps. 145-152.

Okazaki, Shintaro and Charles R. Taylor, (2005), "Understanding Advertising Standardization in an European Context: An Empirical Model", in Proceedings of the 34th European Marketing Academy (EMAC) Conference 2005 "Rejuvenating Marketing: Contamination, Innovation, Integration", Milan, Italy: Bocconi University.

Charles R. Taylor, Stacy Landreth and Hae-Kyong Bang (2005), "The Good, the Bad, and the Ugly of Media Portrayals of the 'Model Minority,'" *Proceedings of the 30th Annual Macromarketing Conference*, (Mark Peterson and Ronald Paul Hill, eds), p. 63.

Charles R. Taylor and Michael Walsh (2005), "What Does 'Made in the USA' Mean? A Review of Legislation and Litigation Pertaining to Country of Origin Claims," *Proceedings of the 2005 Marketing and Public Policy Conference*, forthcoming.

Charles R. Taylor and George R. Franke (2004), "An Assessment of the Highway Beautification Act's Consistency with American Public Opinion," *Proceedings of the 2004 Marketing and Public Policy Conference*, 83-85.

Charles R. Taylor, (2003) "What's Wrong with International Advertising Research (and What's Right)," *Proceedings of the 2003 Conference of the American Academy of Advertising*, (Les Carlson, ed.), p.3.

Charles R. Taylor, (2003) "Meet the Editors: Journal of Advertising and Some Journals You Might Not Have Considered but Should," (special session) *Proceedings of the 2003 Conference of the American Academy of Advertising*, (Les Carlson, ed.), p.147.

Charles R. Taylor and Michael Walsh (2003), "Resolving Product Standards Disputes," portion of special session on "Challenges to Public Policy: Emerging Issues in International Markets," *Proceedings of the 2003 Marketing and Public Policy Conference*, p.59.

Garrett, Jason, Shaoming Zou, and Charles R. Taylor (2003), "International Advertising: A Review of the Empirical Research from 1990 to 2002," *Proceedings of the American Marketing Association Summer Educators' Conference,* Chicago, IL.

Shaoming Zou, Charles R. Taylor, S. Tamer Cavusgil (2003), "The Political Economy Explanation of International Market Entry Mode Choice: An Exploratory Study," The State of the Art Research in International Marketing, Subhash Jain, ed., University of Connecticut - CIBER.

Charles R. Taylor (2002), "Publishing Public Policy Research: Journals and Their Editors," *Proceedings of the 2002 Marketing and Public Policy Conference*, Chicago: American Marketing Association.

Mary Anne Raymond and Charles R. Taylor (2000) "Legal Restrictions on Advertising by Product Category in China, Japan, South Korea, and Taiwan," *Proceedings of the 2000 Marketing and Public Policy Conference*, p.22-23.

Charles R. Taylor and Michael Maynard (1999), "Attitudes Toward Direct Marketing and Its Regulation: A Comparison of the U.S. and Japan," *Proceedings of the 1999 Marketing and Public Policy Conference*.

Charles R. Taylor and Michael Maynard (1999), "The Impact of a Culture's Communication Style on Attitudes Toward Direct Marketing: Comparing Japan and The United States" *Proceedings of the American Academy of Advertising Conference*, p.194-195.

Charles R. Taylor (1998), "Agency Perspectives on Cultural Factors Influencing Advertising in Taiwan," *Proceedings of the 1998 Conference of the American Academy of Advertising*, p.316.

Charles R. Taylor and Alan Shao (1998), "Advertising Strategies in Taiwan," *Proceedings of the 1998 Conference of the American Academy of Advertising*, p.315.

Mary Anne Raymond, Charles R. Taylor, and Alan Shao (1998), "Socio-Cultural Factors Understanding Restrictions and Regulations Affecting Advertising across Product Types in Taiwan," *Proceedings of the 1998 Marketing and Public Policy Conference*, p.67.

Michael B. Mazis and Charles R. Taylor (1998), "The Regulation of Advertising in Sensitive Product Categories: Global Perspectives," *Proceedings of the 1998 Marketing and Public Policy Conference*, p.64-65.

Charles R. Taylor and John C. Taylor, (1997) "The Information Content of Outdoor Advertisements: An Analysis of Retailers' Use of Institutional and Promotional Information Cues," *Proceedings of the American Marketing Association Marketing Communications Conference*, p.56-58.

Charles R. Taylor and Barbara B. Stern, (1997), "Advertising Portrayals of Asian Americans:

The Asian American View," *Proceedings of the 1997 Conference of the American Academy of Advertising,* p.269-271.

Barbara B. Stern, Charles R. Taylor, Hae-Kyong Bang, Wei-Na Lee, and Hairong Li (1997), "Asian-Americans: Insights for Advertisers on Appealing to an Attractive, Yet Misunderstood Demographic Group," *Proceedings of the 1997 Conference of the American Academy of Advertising*, p.269.

Charles R. Taylor, Shaoming Zou, and Gregory E. Osland (1996), "International Market Entry Mode Choice by U.S. and Japanese MNCs: A Cross-Cultural Assessment of the Transaction Cost Analysis Framework," *Proceedings of the 1996 American Marketing Association Summer Educators' Conference*, C. Droge and R. Calantone (eds.), p.402.

Charles R. Taylor (1996), "Televised Portrayals of Asian Americans," *Proceedings of the 1996 American Academy of Advertising Conference,* p.119-120.

Charles R. Taylor (1995), "Brand Differentiation and Advertising Effectiveness," *Proceedings of the Joint Conference of the Korean Marketing Association and the American Marketing Association*, J.W. Lim and S.T. Cavusgil, (eds.), p.302-321.

Charles R. Taylor and Gordon E. Miracle (1995), "Foreign Elements in Korean and U.S. Television Advertising," *Proceedings of the Joint Conference of the Korean Marketing Association and the American Marketing Association*, J.W. Lim and S.T. Cavusgil (eds.), p.93-94.

Charles R. Taylor and Thomas J. Page, Jr. (1994), "A Comparison of the Effectiveness of Brand Differentiating Messages in Korean and U.S. Television Advertising," *Proceedings of the Fourth Symposium on Cross-Cultural Consumer and Business Studies*, p.179-182.

Charles R. Taylor and Ju Yung Lee (1994), "Not in Vogue: Portrayals of Asian Americans in Magazine Advertising," *Proceedings of the 1994 Marketing and Public Policy Conference*, p.158.

Charles R. Taylor, Doo Hee Lee, and Hae-Kyong Bang (1993), "Advertising Strategies in Korea and the United States," *Proceedings of the Decision Science Institute's International Conference*, Seoul, Korea, Byung S. Kang and Jong U. Choi (eds.), p.788-791.

Charles R. Taylor and Doo Hee Lee (1993), "A Comparison of the Effectiveness of High Information Level Strategies in Korean and U.S. Advertising," *Proceedings of the Decision Science Institute's International Conference*, Seoul, Korea, Byung S. Kang and Jong U. Choi (eds.), p.776-779.

Charles R. Taylor and Jay L. Laughlin (1993), "The Effectiveness of Brand Differentiating Strategies in Korean Advertising," *Proceedings of the International Academy of Business Disciplines Conference*, F. V. Mastrianna and Abass Alhahfaji (eds.), p.414-418.

Charles R. Taylor and Weih Chang (1993), “The History of Outdoor Advertising Regulation in the United States,” *Proceedings of the Sixth Conference on Historical Research in Marketing and Marketing Thought*, p.283-299

Charles R. Taylor and Glenn S. Omura (1992), "Back to the Political Economy Paradigm in the Study of Marketing in Economic Development: A Case Analysis of South Korea," in *Proceedings of the Macromarketing Seminar*, Breukelen, Netherlands, p.551-576.

Charles R. Taylor and Shaoming Zou, (1992) "Advertising and its Effect on Industrial Concentration: The Case of the Soft Drink Industry," *Proceedings of the Conference of the American Academy of Advertising*, p.42-43.

Steven W. Kopp and Charles R. Taylor (1991), “Try Your Luck! A History of Prize Promotions!,” *Proceedings of the Fifth Conference on Historical Research in Marketing and Marketing Thought*, p.285-299

Gordon E. Miracle, Charles R. Taylor, and Kyu Yeol Chang (1990) "The Difficulty of Standardizing International Advertising: Some Propositions and Evidence from Japanese, U.S. and South Korea Television Advertising,” *Proceedings of the Advertising & Consumer Psychology Conference*, p.5.

Gordon E. Miracle, Kyu Yeol Chang, and Charles R. Taylor (1989) "Relationships Between Cultural Variations and Differences in Japanese and US Television Advertising," *Positioning for the 1990s: Proceedings of the 1989 Southern Marketing Association Conference,* R.L. King (ed.), p.347-351.

Charles R. Taylor and John C. Taylor (1989), "Towards a General Theory of the Effects of Deregulation on Competitive Structure and Performance," *Positioning for the 1990s: Proceedings of the 1989 Southern Marketing Association Conference*, R.L. King (ed.), p.438-442.

John C. Taylor and Charles R. Taylor (1989), "Marketing Related Public Policy Issues: The Role of Marketing Academicians and the Value of an Historical Context Approach,” *Proceedings of the Fourth Conference on Historical Research in Marketing and Marketing Thought*, T. Nevett, K. Whitney, and S. Hollander, (eds.), p.213-236.

PRESENTATIONS

"Meet the Editors" American Marketing Association (February 2023).

"Building a Successful Academic Career: The Role of Research," Keynote presentation to the Business Association of Latin America (BALAS), Lisbon, Portugal. (August, 2022)

"How to Publish in Advertising Journals," Emerging Markets Conference Board, Lllujbiana, Slovenia. April (2022)

"New Issues in Advertising Research," Keynote Presentation to ICAMA Conference, Jeju, Korea. (October, 2023)

"Meet the Editors," International Conference on Research in Advertising, (June 2022).

"Meet the Editors," American Academy of Advertising Conference, (April 2022).

"Strategies for Publishing in Top Functional Area Journals," Keynote speech presented to Emerging Marketing Conference Board Annual Conference, Puebla, Mexico. (November 2021)

"Hot Topics in Advertising and Luxury Brand Research in 2021," Keynote speech presented to GAMMA Global Fashion Marketing Conference, Seoul, Korea. (November 2021).

"Meet the Editors," Society for Marketing Advances Conference, Orlando (November, 2021).

"Meet the Editors," International Conference on Research in Advertising, (June 2021).

"Meet the Editors," American Academy of Advertising Conference, (April 2021).

"Meet the Editors," Society for Marketing Advances Conference, New Orleans (November, 2020).

"Meet the Editors," Global Marketing Conference (GAMMA), Seoul, Korea, (virtual). (November, 2020).

"Developing an Effective Research Stream in Marketing," Keynote speech to 6th International AR & VR Conference, (virtual: Lisbon, Portugal), November 2020.

"Advertising in Emerging Markets," (2020) Keynote speech to ICAMA Conference, (virtual-Bangkok, Thailand).

"Key Trends in Advertising Research," (2020) Keynote speech to Korean Marketing Association, September 2020 (virtual- Seoul, Korea)

"The Future of Advertising in Emerging Markets," Keynote session at the Emerging Markets Conference Board, May, 2020 (virtual- Lllujbiana, Slovenia)

"Meet the Editors," Society for Marketing Advances Conference, New Orleans (November, 2019).

"Meet the Editors." Global Fashion Management Conference at Paris (July, 2019).

"Hot Topics in Advertising Research," Keynote speech presented at Asian Advertising Summit, Singapore (June 2019).

"How to Be a Better Reviewer and Why You Should Care," Presenter in panel session at the 2019 American Academy of Advertising Conference, Dallas, TX.

"Building a Successful Publishing Career." Keynote speech presented at Business Association of Latin American Studies, Lima, Peru (April, 2019).

"Meet the Editors," 2019 Annual Conference of the Emerging Markets Conference Board, "Driving Marketing Excellence through Experiences in Emerging Economies," Delhi, India (January 2019)

"Big Event Advertising Effectiveness: Can it Still Impact Brands? Evidence from Super Bowl Advertising," Keynote speech presented at the Asian Advertising Summit, Hong Kong Baptist University. Hong Kong (May, 2018).

"Super Bowl Advertising: Is it Effective in Brand Building?" Keynote speech presented at ICAMA Conference, Bangkok. Thailand (April 2018).

"Tips for Publishing Your Work and Building a Career," Keynote speech at Emerging Marketing Conference Board conference, Johannesburg, South Africa (April, 2018).

"Technology Innovation and Advertising: Implications for Education and Research," Special session panelist. American Academy of Advertising Annual Conference. New York, NY, (March, 2018).

"Meet the Editors," Part of panel at 2018 ICORIA Conference, Ghent, Belgium (June, 2017).

"Strategies for Building a Career in Advertising Research," Presented at Doctoral Consortium of American Academy of Advertising, Boston. Mass. (April, 2017)

"Consumer Response to Disclaimers in Digitally Retouched Advertisements," Presented at the 2016 Global Marketing Conference, Hong Kong. (July 2016)

"Drivers of Perceived Luxuriousness of a Premium Private Label Product," Presented at the 2016 Global Marketing Conference, Hong Kong. (July 2016)

"How Much Should Teaching be Adapted to Local Markets," Presented at the 2016 American Academy of Advertising Annual Conference, Seattle, WA. (April 2016)

"Meet the Editors" Panel at 2016 Global Marketing Conference at Hong Kong.

"Meet the Editors" International Conference on Research in Advertising. Doctoral Symposium, Llujbiana, Slovenia. (June 2016)

Global Branding Strategies," Yonsei University special lecture, (October 2016).

"Meet the Editors," Society for Marketing Advances Annual Conference (2015), San Antonio, TX. (November).

"Building a Research Agenda and Publishing in Top Advertising Journals," Doctoral Consortium of European Advertising Academy. London, England (July 2015).
"Meet the Editors," ICORIA Conference, London, England (July, 2015).

"Meet the Editors," Global Fashion Marketing Conference of GAMMA (June, 2015).

"The State of Knowledge on Luxury Brand Marketing: A Review of the Literature," Global Fashion Marketing Conference of Global Alliance of Marketing and Management Associations (June 2015).

"That Other Woman: The Evolved Mechanism of Female Competition and Advertising Portrayals of Women in Decorative Roles," ICORIA Conference, London, England, (July 2015).

"Are Super Bowl Ads a Super Waste of Money? The Intermediary Role of Customer Equity and Brand Equity on Stock Price." Presented at the 2014 Global Marketing Conference of the Global Alliance of Marketing and Management Associations.

"Culture and Advertising Executions Revisited," Presented at 2013 ICORIA Conference, Zagreb, Croatia.

"Meet the Editors," Presented at the 2012 ICORIA Conference, Stockholm, Sweden, (June, 2012).

"Cultural Differences in Emotional Advertising," Presented at the 2010 Global Marketing Conference at Tokyo. (September, 2010).

"Meet the Editors." Presented as part of special session at the 2010 Global Marketing Conference at Tokyo (Semptember, 2010).

"Using Genetic Algorithm Segmentation in PLS Path Modeling: Addressing Heterogeneity Assumptions," Presented at the 2010 Global Marketing Conference at Tokyo. (September, 2010).

"Designing Effective Digital Advertising: Current State of Knowledge and Thoughts on Digital Advertising in China," Keynote session speaker at the First Annual Academic Symposium of the

Chinese Advertising Education Committee of the Chinese Association of Higher Education. (August, 2010).

"Meet the Editors," Presentation in Meet the Editors Panel at the 9th Conference on Research in Advertising, Madrid, Spain, (June 2010).

"Public Opinion Toward Digital Billboards in the United States: An Analysis of Recent Polls," Presented at the 9th International Conference on Research in Advertising, Madrid, Spain. (June, 2010).

"Publishing in the International Journal of Advertising," Presented in the Meet the Editors Session of the International Conference on Research in Advertising, hosted by European Advertising Academy, Klagenfurt, Austria (June 2009).

"Six Principles of Effective Digital Advertising," Presented at Dongguk University, Seoul, Korea, (May, 2009).

"Effective Advertising in New Media," Presented at Yonsei University, Seoul, Korea.

"Designing Effective Interactive Advertising." Presented at Ewha Womens' University, Seoul, Korea (May, 2009).

"Designing Effective Interactive Advertising," Presented to the Marketing Science Institute's Mobile Marketing Symposium, Cambridge, MA (December 2008).

"What Should I Do with This Review," Presented to 2008 American Academy of Advertising Emerging Scholar Symposium, San Mateo, CA.

"Principles of Interactive Advertising," Presented at the Autonomous University of Madrid, Spain, December 2008.

"Current Issues in Internet Advertising" Presented at Ludwig Maximillians University, Munich, Germany, October 2008.

Advertising and the Internet: Principles and Best Practices: Presented at University of Amsterdam, October 2008.

"Recent Trends in International Advertising Research: Current State of Knowledge and Where We Need to Go," 2007 Conference of the American Academy of Advertising, Burlington, VT.

Key Trends in Advertising Research: Key Research Topics, Presented to the Korea Advertising Society, Seoul, Korea, August, 2007.

"The Marketing Functions of On-Premise Signs" Presented at the 2006 National Signage Research Symposium at the International Sign Association Conference, September, 2006, Las Vegas, Nevada.

"Portrayals of Asian Americans in Advertising." (2006), Special presentation at the University of Texas at Austin.

"Smoke and Mirrors: Advertising and Tobacco" panelist in session at the National Center for Addiction and Substance Abuse (Columbia University) panel "Up in Smoke: Tobacco and American Youth," moderated by Jackie Judd, (September 2006), New York.

"A Review of the Effect of Cigarette Advertising Bans," American Marketing Association's Marketing and Public Policy Conference, June, 2006, Long Beach, CA.

"Marketing Trends and the New Media: It's Still All About the Brand," Featured speech to ADKOR 2005, The 2005 Korea Advertising Congress. Organized by the Korean Federation of Advertising Agencies. Seoul, Korea, November 8, 2005.

"Hot Topics in U.S. Advertising," Special Presentation to the Korean Advertising Society, Seoul Korea, July 6, 2005.

"Moving International Advertising Research Forward: A New Research Agenda," Presented at the 4th International Conference on Research in Advertising, June 2005, Saarbrucken, Germany: Saarland University, p.14 (keynote speaker).

"The Good, the Bad, and the Ugly of Media Portrayals of the 'Model Minority,'" (2005) Presented at the 30th Annual Marketing Conference, St. Petersburg, FL. (plenary session).

"On-Premise Signs as Storefront Marketing Devices and Systems," Presented at the 2005

National Signage Research Symposium at the International Sign Association Conference, May, 2005, Las Vegas, Nevada. (plenary session).

"Asian Americans in Advertising: Portrayals of the Model Minority," Presented to the 11th Asia Pacific Law Students Association Conference on Law and Public Policy, Harvard University, March 2005, Cambridge, MA.

"Advertising Standardization and its Impact on Financial and Strategic Performance: Evidence from Japanese and U.S. Subsidiaries Operating in the EU," Presented at the Korean Academy of Marketing Science Fall Meeting, November 2004, Jeonju, Korea.

"Deceptive Advertising and Corporate Responsibility: The Role of Self-Regulation," Presentation to the Philadelphia Advertising Club, Philadelphia, PA, November 2004.

"An Assessment of the Highway Beautification Act's Consistency with American Public Opinion," Presented at the 2004 Marketing and Public Policy Conference, Salt Lake City, Utah.

"Regulation of On-Premise and Off-Premise Signs: Perspectives from Three Research Studies," Presented to the Transportation Research Board Meeting, January, 2004, Washington, DC.

"Building a Career in Marketing and Public Policy Research," Presented at the Doctoral Consortium of the 2003 Marketing and Public Policy Conference," Washington, DC.

"Resolving Product Standards Disputes," Presented at the 2003 Marketing and Public Policy Conference, Washington, DC.
"The Impact of Sign Regulation on Marketing Activities and Business Valuation," Presented at the 1st National Signage Research Association, Las Vegas, NV.

"What's Wrong (and What's Right) with International Advertising Research," Presented at the 2003 meeting of the American Academy of Advertising, Broomfield, CO.

"A Survey of Alternatives to Billboards and 30 Years of Public Opinion towards Billboards," part of "Billboard Experts" panel, 2002 Outdoor Advertising Legal Seminar, Washington DC.

"Making Good Decisions Pertaining to Departmental, College, and External Service Early in an Academic Career," Presented to the Doctoral Consortium of the 2001 Conference of the Society from Marketing Advances, New Orleans, LA.

“Legal Restrictions on Advertising by Product Category in China, Japan, South Korea, and Taiwan,” Presented at the 2000 Marketing and Public Policy Conference, Washington, DC.

“Attitudes Toward Direct Marketing and its Regulation: A Comparison of the U.S. and Japan,” Presented at the 1999 meeting of the American Academy of Advertising, Albuquerque, NM.

“Advertising Strategies in Taiwan,” Presented at the 1998 meeting of the American Academy of Advertising, Lexington, KY.

“The Regulation of Advertising in Sensitive Product Categories: Global Perspectives,” Presented at the 1998 Marketing and Public Policy Conference, Washington, DC.

"Foreign Market Entry Mode Strategies of Japanese and U.S. Firms," Presented at the 1998 meeting of the Academy of Marketing Science, Norfolk, VA.

"The Information Content of Outdoor Advertisements: An Analysis of Retailers' Use of Institutional and Promotional Information Cues," Presented at the 1998 American Marketing Association Marketing Communications Conference, Dublin, Ireland.

"Advertising Portrayals of Asian Americans: The Asian American View," Presented at the 1997 Conference of the American Academy of Advertising, St. Louis, MO.

"A Cross-Cultural Assessment of the Transaction Cost Analysis Framework," Presented at the 1996 American Marketing Association Summer Educators' Conference, San Diego, CA.

"Regulatory Issues in Direct Marketing: A Comparison of the U.S. and Japan," Presented at the 1996 Marketing and Public Policy Conference, Arlington, VA.

"Televised Portrayals of Asian Americans," Presented at the 1996 American Academy of Advertising Conference, Vancouver.

"Brand Differentiation and Advertising Effectiveness," Presented at the 1995 Joint Conference of the American Marketing Association and the Korean Marketing Association.
"Magazine Portrayals of Ethnic Minorities," Presented at the 1995 Conference of the American Academy of Advertising, Tuscon, AZ.

"Culture's Consequences in Advertising: The Impact of Information Level Strategies on the Effectiveness of Korean and U.S. Advertising," Presented at the 1994 Conference of the American Academy of Advertising, Tuscon, AZ.

"Not in Vogue: Portrayals of Asian Americans in Magazine Advertising," Presented at the 1994 Marketing and Public Policy Conference, Arlington, VA.

"A Comparison of the Effectiveness of High Information Level Strategies in Korean and U.S. Advertising," Presented at the Decision Science Institute's 1993 International Conference, Seoul, Korea.

"Advertising Strategies in Korea and the United States," Presented at the Decision Science Institute's 1993 International Conference, Seoul, Korea.

Guest Speaker on the Topic of, "Implications of Marketing and Public Relations for Parks and Recreation Programs," at Taegu University, Taegu, Korea.

"Litter on a Stick or the Lifeblood of Small Business: Regulatory Issues in Outdoor Advertising, presented at the 1993 Marketing and Public Policy Conference, East Lansing, MI.

"The History of Outdoor Advertising Regulation in the United States," Presented at the Sixth Conference on Historical Research in Marketing and Marketing Thought (April 1993).

"Journal Special Sections and the Advancement of Knowledge: A Product Life Cycle Case Study," Presented at the 1992 AMA Winter Educators Conference, San Antonio, TX.

"Advertising and its Effect on Industrial Concentration: The Case of the Soft Drink Industry," Presented at the 1992 Conference of the American Academy of Advertising, San Antonio, TX.

Guest speaker on the topic of, "Comparing Television Advertising in Korea and the United States," at the Korea University, Seoul, Korea (September, 1991).

"Retail Television Advertising: Is it Really Unsophisticated?" Presented at the Symposium on Patronage Behavior and Retail Strategy, Baton Rouge, LA (1991).

"Try Your Luck: A History of Prize Promotions in the United States," Presented at the Fifth Conference on Historical Research in Marketing and Marketing Thought, East Lansing, MI (May 1991).

"Relationships Between Cultural Variations and Differences in Japanese and US Television Advertising," Presented at the 1989 Southern Marketing Association Conference, New Orleans, LA.

"Marketing Related Public Policy Issues: The Role of Marketing Academicians and the Value of a Historical Context Approach," Presented at the Fourth Conference on Historical Research in Marketing and Marketing Thought, Charleston, SC (May, 1989).

Served as Panelist on the "Advertising in the 21st Century" session at the 1989 Southern Marketing Association Conference, New Orleans.

EDITORIALS

Charles R. Taylor (2024), "Understanding Podcast Advertising: The Need for More Research," *International Journal of Advertising* 43(6), 931-932.

Charles R. Taylor (2024), "Ad Skipping, The 'Ad Free Internet' and Privacy: A Call for Research," *International Journal of Advertising* 43(3), 403-404.

Charles R. Taylor (2023) "Sonic Branding as a Promotional Tool: A Concept Whose Time Has Come and a Call for Research," *International Journal of Advertising*, 42(8), 1239-1241.

Charles R. Taylor (2023) "Thoughts on Cross-cultural Advertising Research in 2023," *International Journal of Advertising*, 42(6), 969-971.

Charles R. Taylor (2023) "Non-fungible Tokens (NFTs) as Promotional Devices: Research Needs and Future Projections," *International Journal of Advertising*, 42(5), 799-800.

Charles R. Taylor (2023) "Digging Deeper on Diversity and Inclusion in Advertising Research: A Call to Action," *International Journal of Advertising*, 42(4), 639-640.

Charles R. Taylor (2023) Getting Sentimental About the Need for More Research on Nostalgia in Advertising," *International Journal of Advertising*, 42(3), 459-460.

Charles R. Taylor (2023) "New Thoughts on Advertising's Impact on Consumer Prices," International Journal of Advertising, 42(2), 261-262.]

Charles R. Taylor, Douglas C. West, Colin McDonald & Michael Waterson (2023) "Reflections on the *International Journal of Advertising* on the Journal's History and First 40 years, *International Journal of Advertisin*g, 42(1), 13-17.

Charles R. Taylor (2022), "Hitting the Mark with Active Agers: A Call for More Research on Older Consumers," *International Journal of Advertising*, 41(7), 1179-1180.

Charles R. Taylor (2022) "Future Needs in Gender and LGBT Advertising Portrayals," *International Journal of Advertising*, 41(6), 971-973.

Charles R. Taylor (2022) Advertising and Small Businesses: The Need for More Research, *International Journal of Advertising*, 41(4), 589-590.

Charles R. Taylor (2022), "Research on Advertising in the Metaverse: A Call to Action," *International Journal of Advertising*, 41(3), 383-384.

Charles R. Taylor (2021) "A Call for More Research on Authenticity in Corporate Social Responsibility Programs", *International Journal of Advertisin*g, 40(7), 969-971.

Charles R. Taylor (2021), "Generational Research and Advertising to Various Age Cohorts," *International Journal of Advertisin*g, 40(5), 683-685,

Charles R. Taylor (2021), Charting the Path Forward for the International Journal of Advertising, *International Journal of Advertising*, 40(2), 145-147.

Charles R. Taylor (2021), "On Hideki Matsuyama and the Need for More Study of Global Brand Equity," *International Journal of Advertising*, 40(3), 325-326.

Charles R. Taylor (2020) "The Urgent Need for More Research on Influencer Marketing,"*International Journal of Advertising*, 39(7), 889-891,

Charles R. Taylor (2020), "Advertising and Covid-19," *International Journal of Advertising*, 39(5), 587-589.

Charles R. Taylor (2020), "Common Mistakes Made in Submissions to Leading Advertising Journals," *International Journal of Advertising,* 39(3), 329-331.

Charles R. Taylor (2019) "What the Business Roundtable's Statement on the Purpose of a Corporation Means for the Study of Corporate Social Responsibility in Advertising, *International Journal of Advertising*, 38 (8), 1067-1069.

Charles R. Taylor (2019) Editorial: Artificial intelligence, Customized Communications, Privacy, and the General Data Protection Regulation (GDPR), *International Journal of Advertising*, 38 (5), 649-650,

Charles R. Taylor (2019), "Over the Top, Connected, Programmatic and Addressable Television! What Does It All Mean? Definitions and a Call for Research." *International Journal of Advertising*, 38 (3), 343–344

Charles R. Taylor (2019), "The International Journal of Advertising Now Welcomes 'Perspectives' Papers," *International Journal of Advertising*, 38 (2), 171-172,

Charles R. Taylor (2019), Taylor's theorem part II: advice for socially responsible advertisers, *International Journal of Advertising*, 38 (1), 1-4.

Charles R. Taylor (2018), "The New Era of Electronic Word of Mouth (eWOM): 'Be More Chill' Overrules the Critics," *International Journal of Advertising*, 37 (5), 849-851.

Charles R. Taylor (2018), "Global Consumer Culture and Advertising Research," *International Journal of Advertising*, 37 (4), 505-507.

Charles R. Taylor (2018), "Red Alert: On The Need for More Research on Corporate Social Responsibility Appeals in Advertising," *International Journal of Advertising*, 37 (3), 337-339.

Charles R. Taylor (2018), "Generational Research and Advertising to Millennials*, International Journal of Advertising*, 37 (2), 165-167.

Charles R. Taylor (2017), "How to Avoid Marketing Disasters: Back to the Basic Communications Model, but with Some Updates Illustrating the Importance of E-word-of-mouth Research," *International Journal of Advertising*, 36 (4), 515-519.

Charles R. Taylor (2017), "Where Has the Research on Client–agency Relationships gone? The Need for a Deeper Understanding of the Future of Account Management, International Journal of Advertising," 36 (3), 393-395.

Charles R. Taylor (2017), "Native Advertising: The Black Sheep of the Marketing Family," *International Journal of Advertising*, 36 (2), 207-209.

Charles R. Taylor (2017), "The Importance of Research by Cross-national Teams," *International Journal of Advertising*, 36 (1), 1-2

Charles R. Taylor (2016), "On to a New Year," International Journal of Advertising, 35 (6), 907-908.

Charles R. Taylor (2016), "How Much Does an NCAA Basketball Championship Matter: A Call for Research on the Public Relations Impact of Athletic Success," *International Journal of Advertising*, 35 (4), 617-621.

Charles R. Taylor (2016), "Advertising for Luxury and Fashion Goods: An Emerging Area," *International Journal of Advertising*, 35 (3), 389-390.

Charles R. Taylor (2016), "Some Interesting Findings about Super Bowl Advertising," *International Journal of Advertising*, 35 (2), 167-170.

Charles R. Taylor (2015), "The Imminent Return of the Advertising Jingle*," International Journal of Advertising*, 34 (5), 717-719.

Charles R. Taylor (2015), "A Call for More Research on 'Ggreen'or Environmental Advertising," *International Journal of Advertising*, 34 (4), 573-575.

Charles R. Taylor (2015), "On the New Era of Zipping and Zapping: The Need for Research on How Advertisers Deal with an Era of Time-shifted Television Program Viewing on a Variety of Devices," *International Journal of Advertising*, 34 (3), 403-405.

Charles R. Taylor (2015), "Creating Win–win Situations via Advertising: New Developments in

Digital Out-of-home Advertising," *International Journal of Advertising*, 34 (2), 177-180.
Charles R. Taylor (2015), "The International Journal of Advertising in 2015 and Beyond," *International Journal of Advertising*, 34 (1), 1-2.

Charles R. Taylor (2014), "Conducting State-of-the-art Cross-cultural Research," *International Journal of Advertising*, 33 (4), 627-631.
Charles R. Taylor (2014), "Should Tax Deductibility for Advertising be Eliminated? The Research Evidence says No," *International Journal of Advertising*, 33 (2),197-202.

Charles R. Taylor (2014), "Corporate Social Responsibility and Advertising: Does it Extend to Taking Stances on Social Issues?" *International Journal of Advertising*, 33 (1), 11-15.

Charles R. Taylor (2013), "Customised Communications: Relevance vs Privacy in Targeted Messaging," *International Journal of Advertising*, 32 (4), 483-485.

Charles R. Taylor (2013), "On the Economic Effects of Advertising – Evidence that Advertising = Information,". *International Journal of Advertising,* 32 (3), 339-342.

Charles R. Taylor (2013), "The Advertising Literature and the Role of the *International Journal of Advertising*," *International Journal of Advertising,* 32 (2)*, 179-182.*

Charles R. Taylor (2013), "Hot Topics in Advertising Research," *International Journal of Advertising,* 32 (1), 7-12.

Charles R. Taylor (2012), "Back to the Future: Some Topics We Should Not Forget About in Advertising research," *International Journal of Advertising*, 31(4), 699-702.

Charles R. Taylor (2012), "The London Olympics 2012: What Advertisers Should Watch," *International Journal of Advertising*, 31 (3), 459-464.

Charles R. Taylor (2012), "On Advertising in the BRICs and Other Emerging Markets," *International Journal of Advertising*, 31 (2), 227-230.

Charles R. Taylor (2011) Making Academic Research on Advertising More Managerially Relevant," *International Journal of Advertising,* 30 (5), 739-742.

Charles R. Taylor (2011), "New Directions for Research on Targeting Minority G*roups*," *International Journal of Advertising,* 30 (4), 553-558.

Charles R. Taylor (2011), "On Advertising Research that Makes an I*mpact*," *International Journal of Advertising,* 30 (3), 369-371.

Charles R. Taylor (2011), "On Puffery, Professor Preston, and the Societal Effects of Advertising," *International Journal of Advertising*, 30 (2), 201-204.

Charles R. Taylor (2010), "Campaigning for More Research on Political Advertising," *International Journal of Advertising*, 29 (5), 681-685.

Charles R. Taylor (2010), "Innovation in Traditional Media: Keeping Our 'Eyes On' An Innovative New Measurement System for Out of Home Advertising," *International Journal of Advertising*, 29 (4), 521-525.

Charles R. Taylor (2010) Measuring Return on Investment from Advertising: 'Holy Grail' or Necessary Tool? *International Journal of Advertising*, 29 (3), 345-348.

Charles R. Taylor (2010), "Integrated Marketing Communications in 2010 and Beyond," *International Journal of Advertising*, 29 (2), 161-164.

Charles R. Taylor (2010), "Toward Stronger Theory Development in International Advertising Research," *International Journal of Advertising*, 29 (1), 9-14.

Charles R. Taylor (2009), "Product Placement: A Hot Topic Gets Hotter," *International Journal of Advertising*, 28 (5), 753-756.

Charles R. Taylor (2009), "On the Need for Advertising and Public Policy Research," *International Journal of Advertising*, 28 (4), 601-604.

Charles R. Taylor (2009), "Looking Ahead: The Future of the International Journal of Advertising," *International Journal of Advertising*, 28 (2), 195-197.

POPULAR BUSINESS PRESS COLUMNS

Forbes Senior Contributor (Forbes.com) . Available at:
https://www.forbes.com/sites/charlesrtaylor/?sh=2d8f63ac3bef

REFERENCES

Available on request.

Exhibit II
Taylor Deposition Excerpts

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

Cozy Inn, Incorporated, d/b/a The Cozy Inn; Stephen Howard,	:CIVIL ACTION :CASE NO. : :6:24-cv-01027-TC-ADM
Plaintiffs,	:
-vs.-	:
City of Salina, Kansas,	:
Defendants.	:

NOVEMBER 13, 2024

ZOOM VIDEOCONFERENCE DEPOSITION OF CHARLES R. TAYLOR, Ph.D., held via remote teleconference hosted by U.S. Legal Support, located at 1818 Market Street, Suite 1400, Philadelphia, Pennsylvania, on Wednesday, November 13, 2024, at 10:05 a.m., before Michelle Keys, a Stenographer and Notary Public of the Commonwealth of Pennsylvania.

Q. Do you know what a Kerr area is, K-e-r-r, under the Highway Beautification Act?
A. No.
Q. Do you know what the Highway Beautification's Act requirements for local zoning are?
A. There's -- there's restrictions on height, spacing, and lighting.
Q. But with respect to the local zoning of the property in which the billboard is located, do you know what the restrictions are in the Highway Beautification Act?
A. I don't remember a lot of detail, but there's differences based on whether it's commercial or residential.
Q. Turning back to the disclosure statement for a moment, let me just bring that up.

So this is, I suppose, Exhibit A.

So can you see this now?
A. Yes.
Q. Here it says that you're an expert in signage; is that right?
A. Yes.
Q. What is a signage expert?
A. It's somebody who studied and has a -- has a

CERTIFICATE

I HEREBY CERTIFY that the proceedings, evidence, and objections are contained fully and accurately in the stenographic notes taken by me upon the deposition of CHARLES R. TAYLOR, Ph.D., taken on NOVEMBER 13, 2024, and that this is a true and correct transcript of same.

I FURTHER CERTIFY that I am neither attorney nor counsel for, not related to nor employed by any of the parties to the action in which this deposition was taken; further, that I am not a relative or employee of any attorney or counsel employed in this case, nor am I financially interested in this action.



Michelle Keys
Stenographer
and Notary Public

(The foregoing certification of this transcript does not apply to any reproduction of the same by any means unless under the direct control and/or supervision of the certifying reporter.)

Exhibit JJ
Plaintiffs' First Amended Response to First Set of Interrogatories

In the United States District Court
for the
District of Kansas

Cozy Inn, Incorporated, d/b/a The Cozy Inn; Stephen Howard, Plaintiffs, v. **City of Salina, Kansas**, Defendant.	Case No. No. 6:24-cv-01027 Plaintiffs' First Amended Response to Defendant's First Set of Interrogatories; Verification

Plaintiffs' First Amended Response to Defendant's First Set of Interrogatories

Instructions

1. Pursuant to Fed.R.Civ.P. 26 and 33, Plaintiffs are required to answer the following discovery requests within thirty (30) days after service hereof.

2. In your answer or response, please restate each numbered Interrogatory prior to your response to that request.

3. Plaintiffs are required to make a reasonable and good faith effort to obtain the information requested by each interrogatory. If you are unable to answer or respond fully to any request, answer or respond to the extent possible and explain why you cannot answer or respond in full.

4. If you do not have enough personal knowledge to fully answer a request, say so, but make a reasonable and good faith effort to get the information by making inquiry within your organization.

5. In case of doubt as to the scope of a clause including "and," "or," "any," "all,"

"each" or "every," the intended meaning is inclusive rather than exclusive.

6. If you find the meaning of any term in these discovery requests to be unclear, then you should either request clarification or assume a reasonable meaning, state what that assumed meaning is, and answer the request on the basis of that assumed meaning.

7. These discovery requests are continuing in nature and you are requested to furnish amended or supplemental responses and additional documents in accordance with Fed.R.Civ.P. 26(e).

8. Pursuant to Fed.R.Civ.P. 26(e), you are under a duty to promptly amend a prior response to a request if you learn that the prior response is in some material respect incomplete or incorrect and the additional or corrective information has not otherwise been made known to the defendant during the discovery process.

9. If you assert a privilege (*e.g.*, attorney-client privilege) as the reason for refusing to answer or respond or as the basis of an objection to any discovery request, state the specific grounds therefor, separately and specifically identify each individual discovery request as to which such privilege is claimed, and describe the facts upon which you base the assertion of privilege. If the claim of privilege involves a **Communication**, please identify each person present at that **Communication**. Please produce a privilege log identifying each document withheld or redacted pursuant to any alleged privilege.

10. Your answers to the Interrogatories must be verified, dated and signed.

1. DEFINITIONS

1. **"Communication"** or "**Communications**" refers to all means of exchanging information, whether verbal, on paper, or via any electronic means, including but not limited to all

inquiries, discussions, conferences, conversations, negotiations, agreements, interviews, telephone conversations, letters, correspondence, e-mail, text messages, SMS texts, iMessages, private electronic messaging apps, file sharing, and notes.

2. **"Document"** or "**Documents**" shall be defined in their broadest sense under Fed.R.Civ.P. 34, and they mean the original and all copies any writing and each original, or a copy in the absence of the original, and every copy bearing notes or markings not present on the original or copy of the following items, however produced or reproduced, including without limitation: writings, books, invoices, shipping forms, accounting records of any nature whatsoever, agreements, correspondence, SMS texts, iMessages, emails, memoranda, recordings, summaries or records of telephone conversations, summaries of records of personal conversations or interviews, diaries, calendars, day-timers, time sheets and other time records, letters, forecasts, graphs, notebooks, charts, plans, sketches, drawings, video and audio tapes, films, slides, photographs, photo-records, microfilms, tape recordings, minutes or records of meetings or conferences, expressions or statements of policy, lists of persons attending meetings or conferences, summaries of investigations, opinions or reports of consultants, reprints and drafts of any documents, working papers, indices, original or preliminary notes, computer printouts, and other data compilations, including those stored on computer drives, tapes, smartphones, smart watches, tablets, solid-state devices (whether fixed or removable), or internet-based file sharing, file storage, or backup services, from which information can be obtained or translated, if necessary, through detection devices into reasonably usable form. The term "**Document**" shall include all drafts, as well as final versions of any **Document**.

3. "**Sign Code**" means the following provisions of the Salina Code of Ordinances:

(a) Chapter 42, Article X; (b) the definitions found in Chapter 42, Article XIV for words and phrases that are used in Chapter 42, Article X; (c) Section 42-581; (d) Section 42-596 to Section 42-597.1, inclusive; (e) Section 42-598 to Section 42-600, inclusive.

4. "**BID Code**" means Chapter 2, Article X of the Salina Code of Ordinances.

5. "**Cozy Sign**" or "**Plaintiffs' Sign**" means the sign that is the subject matter of this lawsuit, also identified as the display painted on the exterior wall of the Cozy Inn as shown in paragraphs 27 and 28 (the "completed rendition") of Plaintiffs' Amended Complaint.

6. "**Plaintiffs**," "**You**," or "**Your**" means the Plaintiffs identified in Civil Action No. 6:24-cv-01027-TC-ADM collectively, and individually, including Plaintiffs' representatives, attorneys, officers, directors, employees, agents, affiliates, and persons or entities acting or purporting to act on Plaintiffs' behalf.

7. "**Sign**" means a sign as defined in Salina Code of Ordinances § 42-764.

8. "**Person**" or "**Persons**" mean, where contextually appropriate, any individual, corporation, partnership, association, group or entity of any kind.

9. "**Related**" or "**Relating**" means supports, proves, evidences, describes, is associated with, provides background for, explains, concerns or regards.

10. The term "**Identify**" shall mean, where contextually appropriate:

A. With respect to a Person, the name, current or last known address and telephone number for such Person; or

B. With respect to a Document, the title, type (letter, memorandum, etc.), author, recipient and current or last known location of such Document.

11. Any reference to the singular shall include the plural, and references to the plural

shall include the singular.

2. INTERROGATORIES

6. In Plaintiffs' Amended Complaint [Dkt. No. 16], Plaintiffs allege at ¶ 210 that "This demonstrates Salina's antipathy toward content related to a business and commercial speech. This also demonstrates Salina's preference for content unrelated to a business and noncommercial speech." Please describe in detail the basis for this allegation including specific standards of the **Sign Code** or **BID Code** imposed by City staff and the factual basis supporting the allegation in ¶ 210 of the Amended Complaint.

ANSWER: As described in the Amended Complaint, Salina exempts murals from regulation under the mural-sign code regime if Salina considers the mural's content to be noncommercial or "art." Conversely, if Salina perceives the content of the mural to be commercial or to pertain to goods or services sold, then Salina regulates the mural as a sign under the mural-sign code regime. In short, Salina encourages and promotes murals with a noncommercial message while strictly regulating murals it believes have a commercial message. This reflects a preference for noncommercial speech and a hostility toward commercial speech. Examples of this preference for noncommercial speech include:

- The City Manager's statement that "It includes a message that pertains to the goods or services for sale, and that makes it a sign and makes it subject to the sign code." Bates 0285-295.
- A City Commissioner's statement that "I could see much of the mural part be considered art, and then focus on the actual portion that's the message as the commercial aspect." Doc. 16-2 at pg. 22, ln. 24 – pg. 23, ln. 2.

- Ms. Driscoll's hypothetical comparing a mural of a dove to a mural of a coffee pot at a coffee house: "But in general, the dove, the olive branch, the peace are not part of a commercial transaction that would take place in that building or draw you to that building for a commercial transaction. Where if we had a steaming cup of coffee and a coffee pot on the side, those are things that draw you in to the use of that building. Even without a word, that illustration can suggest that commercial transaction." Doc. 16-2 pg. 23, ln. 19 – pg. 24, ln. 4.
- The City Manager's statement that "You know, as we -- as we looked at murals, we had some conversation about this very question.· And the first reaction was, well, if it includes lettering, or if it includes wording. But it really -- if the wording's not commercial in any way or doesn't have an·attachment to a commercial operation, that in·and of itself isn't a disqualifier." Doc. 16-2 pg. 26, ln. 23 – pg. 27, ln. 6.
- The City Manager's statement that "And I say all that because we end -- that ends up being a legal question of, if there are no words but it's still, you know, related to the business activity of the building, I think there's case law out there that says that's still a commercial message and it's still a sign." Doc. 16-2 pg. 28, ln. 15-21.
- The City Manager's statement that "The important distinction here relates to commercial speech and our ability to regulate commercial speech or signs and then specifically how we do that by way of our -- the codes that we have in place." Doc. 16-2 pg. 5, ln. 2-7.
- The City Manager's statement that "And there certainly is a misunderstanding between art and signs and commercial speech." Doc. 16-2 pg. 5, ln. 23-25.

- The City Manager's statement that "And I would reiterate, it's all on the basis of a commercial message." Doc. 16-2 pg. 10, ln. 4-5.
- The City Manager's email to the City Commission stating that "While it might look similar to murals in the downtown and elsewhere, it contains a commercial message promoting a business and its product which makes it a wall sign subject to the applicable zoning codes which includes size limitations among other things." Bates CITY000261-262. The email later states "You may recall that similar questions came up last year related to attempts to classify signs as murals and trying to leverage the various murals installed or proposed to be installed in the downtown. Our immediate solution was to coordinate closely with Boom Salina to confirm that none of their murals would intentionally or unintentionally include commercial speech subject to our sign codes."
- The City Manager's email to the City Commission stating that "We regulate the size of commercial signs through a permit process." Bates CITY000221-222.
- The City Manager's email to a City Commissioner listing the City's talking points on the Cozy's mural which states "A distinction is commonly made between murals and art when compared to commercial speech," and "We regulate the size of commercial signs through a permit process." Bates CITY000220.
- The email of Mr. Anderson explaining that "Work is done to ensure that the Boom mural content does not contain content that could be interpreted as a sign. This is done through SDI, the building owner, the artist, Boom representatives, and city of Salina Development Services." Bates CITY000352.
- The City Manager's email stating that "My intended response is to stress that we have

been very mindful of the Reed v Gilbert case as well as applicable case law regarding what constitutes commercial speech subject to sign code regulation." Bates CITY000218.

- Salina City Code § 42-504(1) exempts noncommercial flags from regulation, but not commercial flags.
- Salina City Code § 42-504(5) exempts memorial signs and tablets from regulation, but not commercial signs or tablets.
- Salina City Code § 42-504(9) exempts window signs that do not display an advertising message, but not window signs that display an advertising message.
- Salina City Code § 42-511 authorizes the substitution of any noncommercial copy in lieu of any other copy, but it does not authorize the substitution of commercial copy in lieu of any other copy.
- Salina City Code § 42-521(1) authorizes advertising signs in the C-4 zoning district if the signs advertise "special public events sponsored by governmental, philanthropic and nonprofit organizations," while prohibiting advertising signs that convey a commercial message.
- Salina City Code § 45-506(1) classifies an advertising sign, which is more heavily restricted than other signs, as "A sign displaying a commercial message that directs attention to" an off-premises business, while a sign that displays a noncommercial message that advertises a off-premises non-commercial entity is not considered an advertising sign.

9. Identify any **Sign**, display, mural or art on the Cozy Inn property which was erected, constructed or displayed in the past 10 years for the purpose of noncommercial speech.

ANSWER: The only displays on the exterior of The Cozy that communicated noncommercial content in the past five years that Plaintiffs are aware of are: 1) the mural on the wall of The Cozy that is the subject of this lawsuit; and 2) a display celebrating the anniversary of The Cozy which has been updated regularly throughout the years to reflect The Cozy's age.

17. Do **You** contend the **Sign Code** does not advance the City's interest in traffic safety? If so, please state all material facts supporting **Your** contention.

ANSWER: The burden of proof is on the Government to show that a restriction on speech satisfies the strict demands of the First Amendment. To date Defendant has not produced evidence as to how the sign code advances its claimed interests in traffic safety, and Plaintiffs are not aware of any such evidence.

Nevertheless, Plaintiffs believe that portions of the sign code may conceivably advance the City's claimed interest in traffic safety. For instance, Plaintiffs could imagine how regulating the construction standards of pole signs might lessen the likelihood of a poorly constructed sign falling in the road. However, Plaintiffs are not aware of any factual evidence that would support this possibility.

Other aspects of the sign code may harm traffic safety. When signs are restricted in size, this makes it more difficult for pedestrians and motorists to find their destination, resulting in drivers and pedestrians who are distracted and more likely to get in an accident that harms themselves or others. Large, distinctive signs, on the other hand, will enhance traffic safety by making it easy for pedestrians and motorists to identify their destination, allowing them to fully focus on traffic safety.

Plaintiffs contend that there is no factual reason to believe that regulating the size and content of murals painted on private property will enhance traffic safety. Plaintiffs contend that there is no factual reason to believe that murals containing a commercial message, or that pertain to goods or services for sale, or with content that "announces," "directs attention to," or "advertises" (however the government choses to define those terms) will decrease traffic safety any more than murals which contain a different message would. Indeed, it seems likely that some non-commercial murals containing a controversial political, religious, or social message (a swastika mural, a gay pride mural, a "defund the police" mural, a Satanists mural, etc.) would be far more likely to upset and distract pedestrians and motorists and decrease safety than a mural of burger-esque flying saucers.

Dated: October 4, 2024.

Kansas Justice Institute

By: Jeffrey Shaw, 29767

/s/ Jeffrey Shaw

Jeffrey Shaw, 29767
12980 Metcalf Avenue, Suite 130
Overland Park, Kansas 66213
Jeff@KansasJusticeInstitute.org
(913) 213-5121
Attorney for Plaintiffs

In the United States District Court
for the
District of Kansas

Cozy Inn, Incorporated, d/b/a The Cozy Inn; Stephen Howard. Plaintiffs, v. **City of Salina, Kansas.** Defendant.	Civil Action No. 6:24-cv-01027-TC-ADM Verification

Verification

I, Stephen Howard, have personal knowledge of myself, my activities, and my intentions, including those set out in Plaintiffs First Amended Answers to Defendant's First Set of Interrogatories. I verify under penalty of perjury under the laws of the United States of America that the factual statements in the Answers to Interrogatories are true to the best of my current knowledge, information, and belief.

Dated: 11-5, 2024.

Stephen Howard, individually and
On behalf of Cozy Inn, Incorporated,
d/b/a The Cozy Inn

Galaxy S22

Exhibit KK
Photos

Exhibit D

Greater Downtown Artwork List

(Approximately 70 permanent and temporary pieces and 4 SculptureTour ballot boxes which contain all the current sculptures on display along Santa Fe)

Santa Fe from South to North (Prescott to Elm)

1. SW corner of Santa Fe and Prescott- Fish Tale, Gregory Johnson, purchased 2011 by Bank of Tescott. Bronze sculpture of boy with fishing pole.

2. Front of Tammy Walker Cancer Center-511 S. Santa Fe- Bronze sculpture of running girl. Private commission. Artwork inside the building includes four local artists commissioned to personalize and warm the space.



3. NW corner of South St. and Santa Fe (in front of the Temple) Mixed Media sculpture on pedestal by Jodie Bliss. “Picasso’s Violin”. 2018 People’s Choice purchase by City of Salina. (First abstract or non-representational work selected in the 8th year of the program)

4. NE Corner of Santa Fe and Mulberry- “Off the Merry-Go-Round” by Jodie Bliss. Rearing horse sculpture in front of Starbucks. Private ScultpureTour purchase in 2019.

Conrad Snider, Newton, KS tile wall tile sculpture at the Salina Art Center (242 S. Santa Fe). Snider and community members collaborated on this mural. Impressions are from downtown architecture and prairie ecosystem. Snider did multiple sculptures and tile additions to the law enforcement center and municipal court buildings in the early phases of the public art program.

5. 200 block of S. Santa Fe- mid-block crosswalk has ballots for sculpture tour. Spillman Plaza mixed media sculpture, “Clarence the Catfish”, the 2022 People’s Choice award winner by Joe and Terry Malesky, Springfield, Missouri.

6. Spillman Plaza south facing wall across from Seraphim- Super Girl painted stencil on brick wall. Joe Lurato, New Jersey. (2022 Boom mural Festival)



7. Campbell Plaza-100 block- Large mural “Open Book”, by Telmo-Miel for the 2022 Boom! Mural Festival. On the back of the Campbell Plaza Stage is the “Love Salina” mural by Salina artist Eric Montoy. Amelia Earhart mural by Logan Hicks and Jo Lurato on back wall of Prickly Pear during the 2022 Boom! Mural Festival, and red fox mural on back wall of Lauren Quinn floral shop by Brady Scott from Hutchinson, KS during 2022 Boom! (This plaza has been granted to Prickly Pear in license agreement, but City still has first-use rights for the stage)







September 2023



8. Across the street in Strand Plaza- large butterfly mural by Mantra. The mid-block crossing has SculptureTour ballots. Also an additional sculpture is in the seating area behind Barollo Grill. This was a Friends of SculptureTour purchase and donation. (The four downtown plazas were named for early founders or early business leaders.)



9. Behind 100 S. Santa Fe- native prairie mural by Mona Caron (2022 Boom Mural Festival) Directly north in the alley north of Iron Ave is a wall mural by the KC artist Gear.



10. Mid-block crosswalk in 100 N. block has sculpture tour ballots.

11. Arcade tunnel between 137 and 141 N. Santa Fe also has two paintings by the mural artist Gear. No title info at this time. (The Smoky Hill River Festival regularly commissions mural artists who create work that is placed elsewhere in the community. Schools, animal shelter, arcades, and other public spaces.)



Parking lot north of 141 N. Santa Fe- 67401 painted mural by Salina artists Robin and Julie Cates. City Lights Stage, mural by Dave Lowenstein, Lawrence, KS completed in June of 2022. Across the street on the north wall of the KU Medical School is a 2023 Boom mural by Add Fuel, a Portuguese artist.



12. 217 N. Santa Fe “Three Kinds of Sons”, Acrylic and latex sprayed mural by Tony Sjoman, Manhattan, NY. (2022 Boom Mural Festival)

13. Mid-block crossing has SculptureTour ballots

14. 249 N. Santa Fe- “For the Love of Steel” motorcycle sculpture. Sonny Corbett, Salina Kansas. 2020 SculptureTour People’s Choice purchase by the City of Salina. Sonny passed away a few months before his work was selected for the 2020-21 show. His friends submitted the work on his behalf. (Point out the reuse of historic Lee Buildings for apartments and commercial retail space. 53 apartments are complete and another 70 will commence soon. Ground floor space for restaurants, retail, or professional office space is also being developed.)

15. Approximately 341 N. Santa Fe- “Mural at the Mill” by Guido Van Helton. Completed in the fall of 2021. Privately funded project by the Salina Kanvas Project. (This was the first major mural project as part of the private Kanvas Project initiative. Based on a photo taken of kids playing Ring Around the Rosie. Mention that the same kids are featured on all sides of the building.) One block north on the east side of the street is a mural of a railroad worker by Chris Stain and a portrait of Martha Cooper by Joe Lurato. In the 500 block of N. Santa Fe on the west side of the street is a mural by PichiAvo from Valencia, Spain.

5th Street from Ash to Mulberry

16. Mid-block west side parking lot. Steel and limestone untitled sculpture by Richie Bergen (harmonica). Friends of SculptureTour purchase as part of pre-tour workshop. Three-bladed steel sculpture "Silver Streaks" by Oklahoma artist Jim Stewart. SculptureTour purchase by Rotary Club gifted to the City.

17. Salina Field House- Perforated metal wall. Designed by Lawrence and Kansas City artist Jeremy Rockwell and fabricated by Zahner, Kansas City, MO Capital Improvement Project Public artwork. (CAD Committee formed a site committee that commissioned a designer to integrate art that also served as a sun block (functional purpose) as well as an aesthetic enhancement to the building.

18. In the 100 block of S. 5th St. at the west entrance of The Garage- large tire sculpture. Artist unknown. More sculpture on the 4th St. entrance of The Garage. A mural by Salina artist Eric Montoy is also featured on a west facing wall of the Garage. Directly across the street to the west in a parking lot behind Campbell Plaza is a mural by Mad C, a German artist from the 2023 Boom Mural Festival.

19. Behind the Stiefel Theatre is Artwork Alley. This is a pre-Festival event completed in May of 2022. with 9 murals by nine different artists. Left to right facing West: Ray Albarez (Saeb), Jeremy Fields (Sadat), Brady Scott, Darren Morawitz, Kamela Eaton, Anthony Parker (Amp), Hannah Scott, north wall "Symphony of Sunflowers" by Brady Scott who also curated the event, and the trash corral by Colin Benson and Chase Wheeler. A majority of funds for this project came from private sources and the Kansas Creative Arts Industries Commission Reimagined Spaces Grant. Additionally, the small figure by the Stiefel Theatre back door is by Joe Lurato. He has another pop-up just to the south in a niche across the alley. At the end of the alley at Walnut is another mural by Mindy Allen, Junction City, KS. On the back wall of the Stiefel Theatre is a 2023 Boom mural by California artist El Mac.





20. Approximately 215 S 5th. Large buffalo mural on wall at back of vacant lots. Artist unknown.

21. SE Corner of South Street and 5th Salina Water Treatment Plant- Public art installation. Found on Salina Arts & Humanities public art page. Artist/fabricator Kent Williams, Wichita, KS.

Additional locations in the greater downtown area

22. Corner of 7th and Elm St. Fire Station #1 Salina Firefighter Tribute Plaza. Artist: Bejamin Victor Custom bronze sculpture of a firefighter.

23. City/County/Library grounds. Butterfly Tree, 2021 People's Choice sculpture at South Library entrance; "Trifinity" bronze by Salinan, Richard Bergen in Caldwell Plaza, and "Wheat Harvest", by James Mages of Hays, KS wheat sculpture in the south drive of the government building. Inside the building is the bronze sculpture "Daughters of Peace", by Benjamin Victor, the 2015 People's Choice.

24. Salina Senior Center (across from "Trifinity" sculpture) on west side 9th St. "Farmer", 2013 People's Choice bronze statue by Lawrence Starck.

25. 211 W. Iron Ave (Smoky Hill Museum) "Patches"-a mixed media sculpture of a hippo by Dale Lewis. The 2018 People's Choice award winner.

26. 232 N. 3rd St is a mural by Pat Perry featuring a collection of images from Salina and Saline, County.

27. 805 The Midway (north side of complex) "We're Better Together" mural by Queen Andrea.

Additional items of interest:

- More than $250 million in public and private investment is taking place throughout the greater downtown in less than 10 years.
- Each of the four blocks of sidewalk downtown have a different art deco inspired design.
- The KU Med Center Salina held a nationwide competition to commission original work for the new medical school.
- The local school district recently included $120,000 (1%) of a school improvement bond project and integrated art in all 16 buildings in the district. They have an articulation agreement stating their intent to include art when they do capital projects.
- Eight new mural artists will be coming to Salina in the first week of October for Boom!
- Funds through Salina Arts & Humanities and Salina Downtown Inc. help provide support for businesses, artists, or performers to make the arts unavoidable throughout the community.
- Since SculptureTour began in 2011, there are now more than 50 pieces of art throughout the community in publicly visible spaces. (This is a private program)
- A new ACE District (Arts, Commerce, and Entertainment) was recently formed and encourages creative acts and more commerce outside of buildings throughout the greater downtown area.
- The Smoky Hill River renewal is underway which will include 7 miles of urban waterway and trails to be completed within the next 8 years. New plazas, artwork, and a restored river with boating and fishing is being developed.
- Salina is projecting $1 billion in capital projects citywide over the next 10 years.
- The first series of murals by Boom! artists intentionally developed content that reflected aspects of the people or geography of this place.

Resources for further study:

Boom! Mural Festival

https://www.boomsalina.art/

Salina Arts & Humanities public art webpage:

https://www.salinaarts.com/public-art/

A page with links to multiple local and regional cultural arts offerings:

https://www.salinaarts.com/resources/

SculptureTour Salina website

https://www.sculpturetoursalina.net/

Salina Art Center

https://www.salinaartcenter.org/

Salina Community Theatre

https://salinatheatre.com/

Stiefel Theatre for the Performing Arts

https://www.stiefeltheatre.org/

Salina Symphony

https://www.salinasymphony.org/main/

Travel and Tourism information:

https://www.salinakansas.org/visit-salina.html

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LEFT TURN
YIELD
ON GREEN
TITLE CO.


In God
We Trust
Psalm 118:8

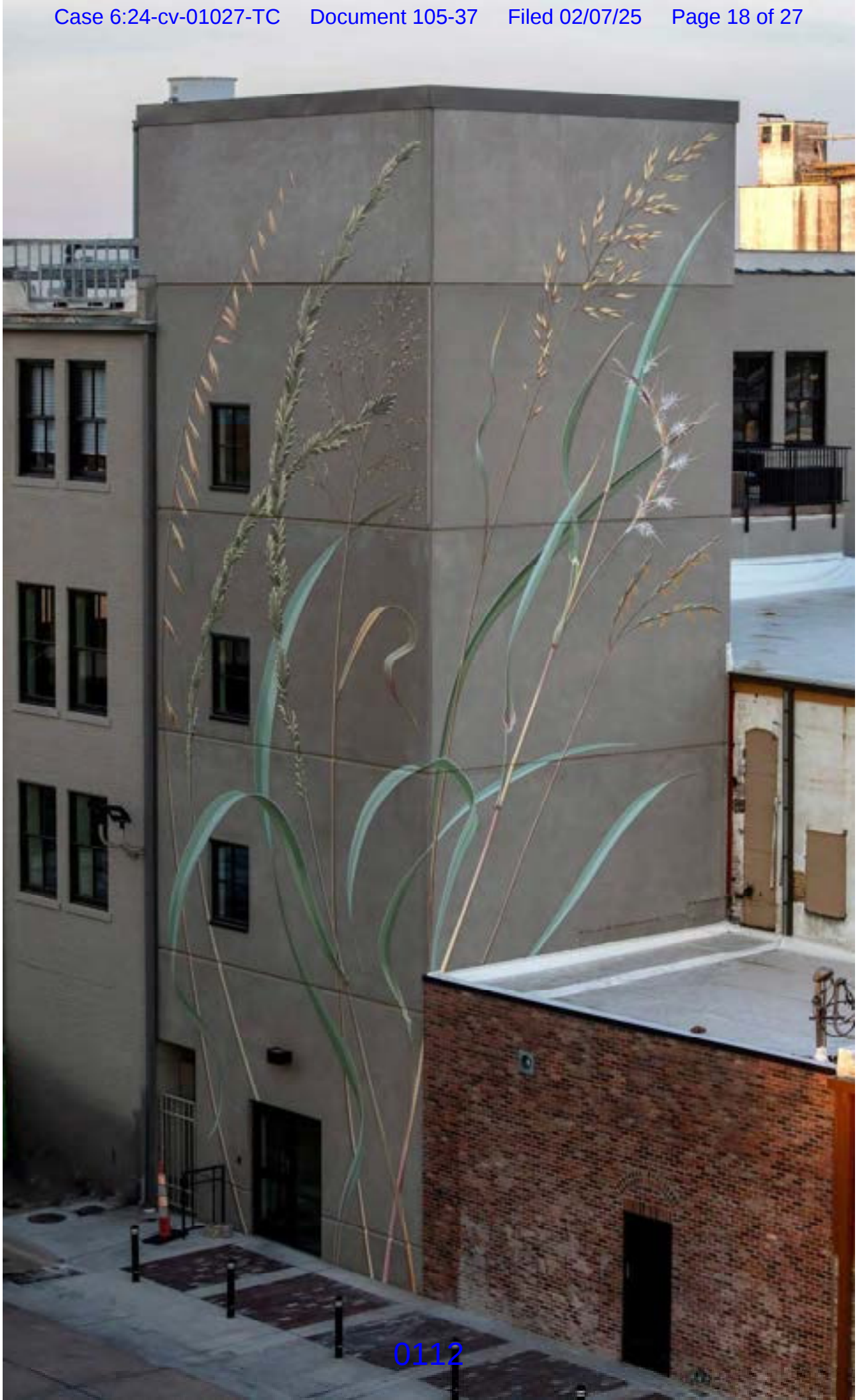





HOLA




SALINE RIVER INFINITY ∞

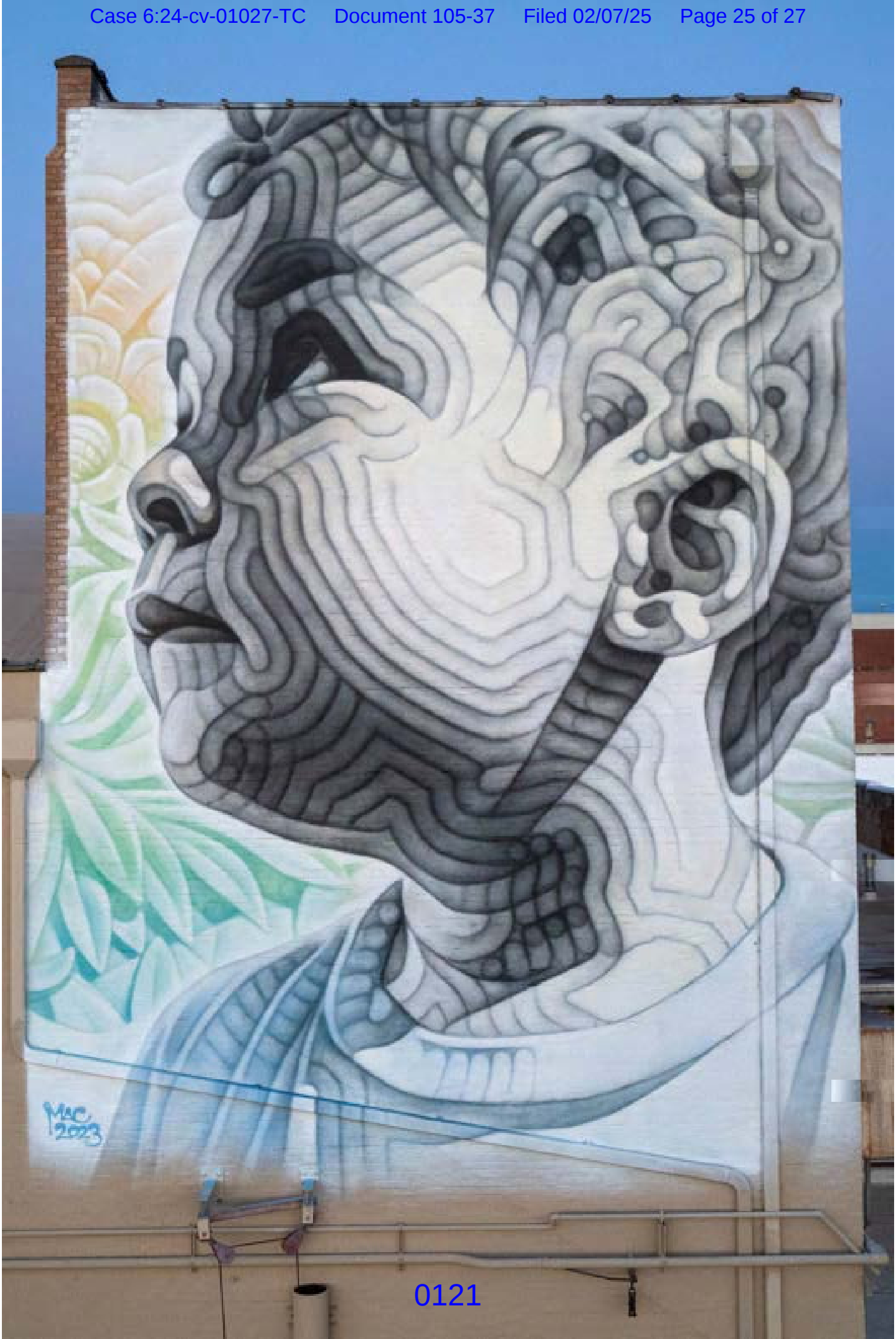


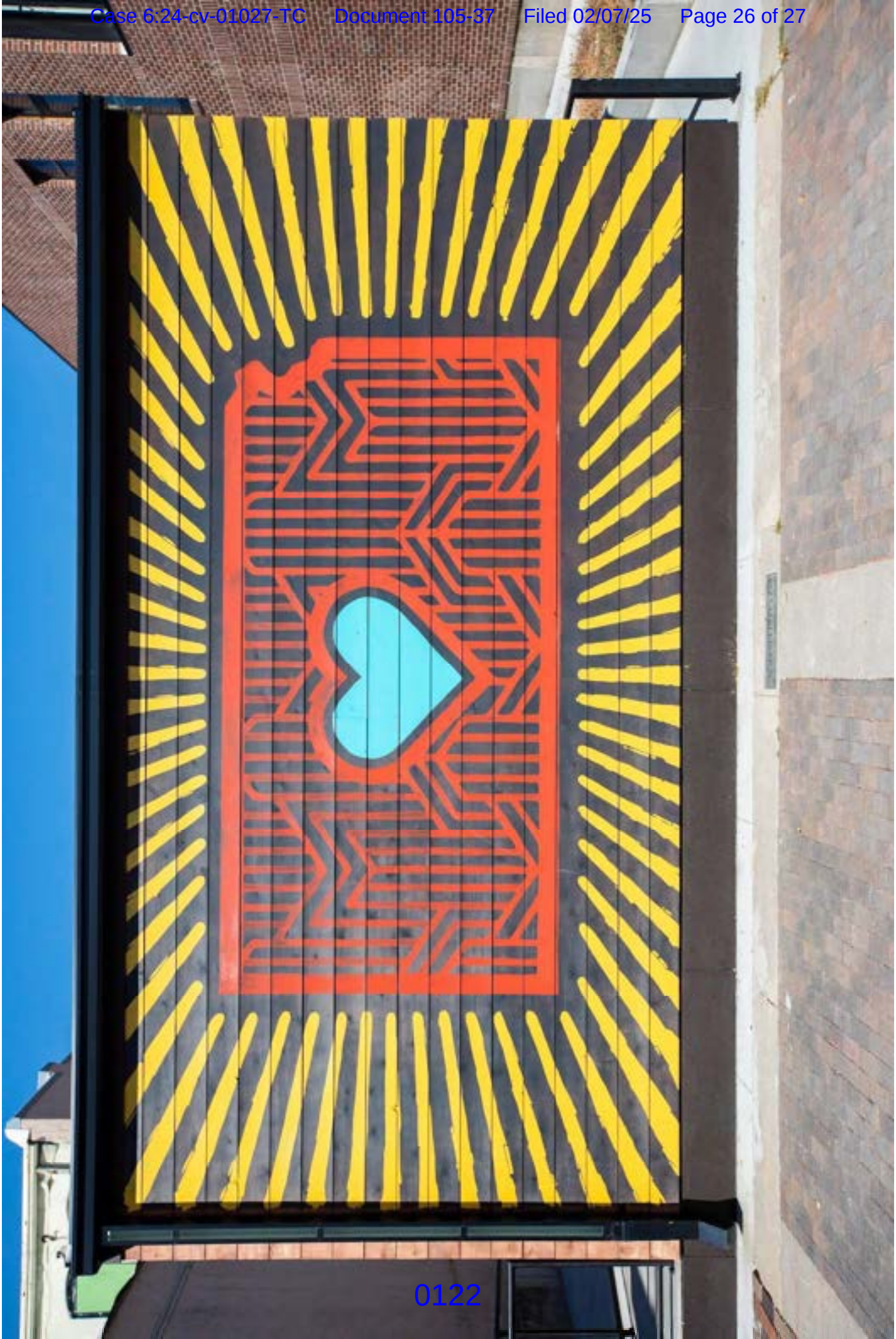

HELLO FROM
67401
SALINA KS






JOE IURATO


MAC
2023



Hate
Hate
Hate

In the United States District Court
for the
District of Kansas

Cozy Inn, Incorporated, d/b/a The Cozy Inn; Stephen Howard. Plaintiffs, v. **City of Salina, Kansas.** Defendant.	Civil Action No. Declaration of Jeffrey Shaw in Support of Plaintiffs' Motion for Summary Judgment

Declaration of Jeffrey Shaw in Support of Plaintiffs' Motion for Summary Judgment

I, Jeffrey Shaw, submit the following in support of Plaintiffs' Motion for Summary Judgment:

1. I am a citizen of the United States, a resident of Kansas, over the age of 18 years old, and fully competent to make this declaration. I knowingly and voluntarily make this declaration based on my personal knowledge. If called as a witness, I could and would testify competently under oath as to the facts set forth below.

2. I am an active member of the State Bar of Kansas in good standing. I am an attorney at the Kansas Justice Institute, and I represent the Plaintiffs in this case.

3. On August 2, 2024, the parties stipulated that the certified transcript of the November 13, 2023, Salina City Commission meeting (attached as Exhibit E of Plaintiffs' Motino for Summary Judgment and previously filed as Doc. 16-2) is an authentic transcript of the meeting.

4. On October 15, 2024, the parties stipulated to the authenticity of all documents produced by the City of Salina in response to Plaintiffs' First Request for Production of Documents. Some of these documents, such as external emails to Salina officials were only authenticated as authentic copies of what the City received and had in its possession.

5. The photographs in Exhibit B have all been authenticated through requests for admission, stipulation, or deposition testimony as authentic representations of The Cozy Inn.

6. The photographs Exhibit F and KK have all been authenticated through requests for admission, stipulation, or deposition testimony as authentic representations of murals in Salina, Kansas.

7. I declare under the penalty of perjury that the above is true and correct.

Dated: February 7, 2025

/s/ Jeffrey Shaw
Jeffrey Shaw