

Appeal Authority of Bountiful City

Decision of Administrative Law Judge

In Re: Appeal of Denial of a Sign Permit application located at 395 North 200 West, Community Chiropractic.

Appellant Dan George DC and Dallas George DC – Community Chiropractic

Background

The Appellant Dan George DC and Dallas George DC from Community Chiropractic (“Appellant”), filed an application for a sign permit (“Application”) on February 11, 2021. The “Scope of Work” in the Application was to update the “A.) - ILLUMINATION: RETRO EXISTING T12 FLUORESCENT INTERNAL LIGHTING TO LED”, “B.) - COMMUNITY CHIROPRACTIC LOGO AND LETTERING: REPLACE ROUTED COPY BACKED WITH ACRYLIC WITH NEW UPDATE LOGO READING: COMMUNITY CHIROPRACTIC & WELLNESS GROUP”, “C.) - ELECTRONIC MESSAGE CENTERS: REPLACE (3) EXISTING OLD OBSOLETE DISPLAYS WITH (3) NEW DISPLAYS”, and “D.) - PAINT DISPLAY: DARK SATIN BRONZE.” *Application in Bountiful City – Administrative Law Judge Packet (“Packet”) page 10 of 63 emphasis in original.*

After months of review and discussion between Appellant and Bountiful City (“City”), Appellant, through its contractor Madsen Walker at Visibility (sign contractor) sent an email demanding a decision. *Email from Madsen Walker to Francisco Astorga dated June 8, 2021.*

The City reviewed the Application and by letter (“Denial Letter”) dated July 1, 2021 denied the Application. As stated in the Denial Letter the existing sign did not meet the current Bountiful City Land Use Codes (“BCLUC”) relating to “maximum height,” “total sign area,” “maximum EMC area,” and “EMC’s on a multiple face sign.” *Denial Letter in Packet pages 18-20 of 63.* As the sign did not meet the current BCLUC it was determined to be a noncomplying sign. *Id. at page 20.* Further, that as a noncomplying sign, the City deemed items A-C in the scope of work “alterations/changes” which is not permitted for a noncomplying sign. *Denial Letter in Packet pages 18-24.* (The City deemed item D from the scope of work “maintenance and repair” which is permitted. *Id. at 21.*)

Findings

1. The required procedural steps were followed.
 - Appellant timely filed an appeal (“Appeal”) of the denial July 15, 2021. *Appeal in Packet pages 25-27.* The Appeal specifically identifies reasons for the appeal as detailed in the Analysis section herein.
 - The Appeal Hearing was held on November 8, 2021, before the appointed Administrative Law Judge (“ALJ”), Ryan W. Loose, as authorized by The Bountiful City Code (“BCC”) § 2-8-102 & Resolution No. 2021-16.
 - All parties were represented. Present at the Hearing were Blake W. Johnson, legal counsel, Dan G George DC, Dallas S. George DC, and

representatives of the sign contractor for Appellant. Francisco Astorga, Planning Director, Clint Drake, City Attorney, and Darlene Baetz, Planning Department for City.

- Appellant and City Stipulated to Exhibits 1 & 2 and the Packet which were received and considered by the ALJ during the deliberation and decision of this Appeal.
 - Appellant provided the Appeal, and the City provided Denial and the Appeal Staff Report which were considered by the ALJ but not received as exhibits. The Supplemental Appeal and Summary Argument were provided but not considered other than those arguments that were already addressed in the Appeal. (*See Analysis section.*)
 - Appellant and City stipulated to ALJ taking pictures of the 4 sides of the sign on the day of the hearing. The pictures are included as Exhibit 3 and considered.
2. The existing sign is a legal nonconforming use pursuant to UCA § 10-9a-511 (44) and a noncomplying sign pursuant to BCLUC § 14-19-107. (The history of how the sign was permitted is anecdotal and does not have clear documentation. However, the Parties agreed and stipulated to the sign as a legal noncomplying sign during the Hearing.)
 3. The Application proposed to “refurbish” as described below: (*See application scope of work and testimony of Mr. Madsen Walker from Visibility.*)
 - Current Fluorescent lighting change to LED.
 - “Replace routed copy backed with acrylic” with routed out copy with 1/2” (T) Clear push-thru acrylic copy. (*Mr. Madsen explained that this was a different copy.*)
 - Replace 3 old obsoleted displays with 3 new displays. (*Mr. Madsen testified that the new displays are different technology and components.*)
 4. The Application proposes design changes to the lettering on the side without the reader boards. Specifically the location of “Community” is shifted from over chiropractic from the “HIRO” to “ACTIC” and “&Wellness Group” below chiropractic is centered.

Questions Presented

There are two questions before the ALJ:

1. May the ALJ consider the Supplemental Appeal and the Summary Argument as part of the Appeal? (“Consideration of the Appeal”)
2. Do items A-C on the scope of work constitute “alterations/changes” or are they “normal maintenance and repair”? (“Alterations/changes vs maintenance and repair”)

Applicable Law

Consideration of Appeal.

The State of Utah requires municipalities to establish an appeal authority to hear and decide, among other issues, “appeals from land use decisions applying land use ordinances.” *UCA §10-9a-701 (1)(b)(ii)*. Bountiful City has elected to appoint an Administrative Law Judge to hear and decide appeals that are provided for in the Bountiful City Code including land use appeals. *BCLUC §§2-8-101, 14-2-108*.

Appeals of a land use authority’s decision must be made within fourteen calendar days and “[n]o other appeals may be made to the Appeal Authority. *BCLUC § 14-2-10 A*. Further, in addition to other requirements, the appeal must “specifically alleged that there is an error in an order, requirement, decision or determination by the Land Use Authority.” *BCLUC §14-2-108 B*.

In Bountiful the scope of review is that the “Appeal Authority shall hold a de novo hearing.” *BCLUC § 14-2-108 D*. In such case the appeal authority “determine[s] the correctness of the land use authority’s interpretation and application of the plain meaning of the land use regulations” and “interpret and apply a land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application.” *UCA § 10-9a-707(4)*.

Alterations/changes vs maintenance and repair.

Utah statute recognizes noncomplying structures and nonconforming uses. *UCA § 10-9a-103(43) & (44)*. Further, the property owner may continue a nonconforming use or noncomplying structure. *UCA § 10-9a-511 (1)(a)*. Utah Code allows the extension of a nonconforming use through the same building as long as there is no structural alteration but it does not address the structural alterations in regards to noncomplying structures. *UCA § 10-9a-511(1)(b)*. The City recognizes the principle of a nonconforming structure for signs as “noncomplying signs”. *BCLUC § 14-19-107*.

The City regulates noncomplying signs strictly and has a stated goal of “eventual elimination”. *BCLUC § 14-19-107 A*. The City’s stated “goal is achieved by strictly construing limits on change, expansion, alteration, abandonment, and restoration.” *Id*. Finally, “[e]xcluding normal maintenance and repair, a noncomplying sign shall not be moved, altered, or enlarged unless it is brought into compliance with this Chapter.” *Id*.

There are two exceptions to these regulations for “1. A face change in a noncomplying sign that does not encroach onto a public right-of-way or easement, and that is not deemed a public safety hazard by the Planning Director or City Engineer. 2. A copy change in a noncomplying permanent sign which was originally approved by the City with a changeable copy feature.” *Id*. *BCLUC* define a face of a sign as “the area of a sign on which the copy is placed.” *BCLUC § 14-3-102 110*.

An alteration of a sign is defined as “[c]hanging or rearranging any structural part or design of a sign, whether by extending on a side, by increasing in area or height, or in moving from one location or position to another, including sign face, enclosure, lighting, coloring, copy

(except on reader board or changeable copy signs), or graphics.” *BCLUC § 14-3-102*. Normal maintenance and repair is not specifically defined.

Finally, *BCLUC § 14-19-119(L)* requires that:

- L. Every sign shall be maintained as originally approved in its sign permit. This applies to all components of the sign including the sign copy. Except:*
 - 1. Portions of changeable copy on approved signs.*
 - 2. Changes of copy area only on legally conforming signs, All non-complying signs, and any change to cabinet, pole, structure, or any other sign element requires a sign permit.*

Analysis

Pursuant to Utah Statute, Bountiful City has established an appeal authority and process for appeals which limits the review of the appeal officer to those issues which are timely appealed. *BCLUC § 14-2-108*. Therefore the only reasons (“reasons” is the term Appellant identified the issues in the Appeal), considered on appeal are those specifically enumerated in the Appeal. If a reason stated in the Appeal was also addressed in the Supplemental Appeal and Summary Argument, then it will also be addressed herein.

The following in italics are the Appellant’s reasons given in the Appeal followed by analysis.

- *Failure of the city to allow us to repair and maintain our sign*
 - *City ordinances do not state that a specific brand or type of light bulbs or computer software must be used when maintaining signage. A change from florescent to LED bulbs –is in line with state objectives to reduce power consumption.*

This reason is not a basis for an appeal as it does not alleged an error in the decision by the land use authority. As a de-novo review, the difference in fluorescent and LED lighting and in reader boards constitutes a change in components.

It is irrelevant and cannot be considered whether or not a change from florescent to LED is in line with state objectives to reduce power consumption.

- *The city is applying current ordinances that were not in affect when our sign permit was issued and built*
 - *We should be held to the sign ordinances when the sign was built under the grandfather clause*

The alleged error is that the City is applying current ordinances not those at the time that the sign was built. As neither party could show what the applicable ordinances were at the time the sign was built, the parties stipulated that the sign was an existing noncomplying structure under state law and a noncomplying sign under *BCLUC*. As such the only evaluation of what was permitted is the sign as it existed at the time of the Application.

The City's contention is that the BCLUC compels them to assure that the sign is maintained as it was when it was approved including the same components and copy. *BCLUC § 14-19-119 L*. Therefore, the City did not err in denying the permit as the ordinance requires the sign to maintain the same components and copy.

Further, as this is a de-novo review, the evidence (as detailed in the Findings section) is that the components and copy would change, thus rendering the sign out of compliance with how it was approved and the stipulation as to the requirements of the ordinances at the time of approval as evidenced by the current sign itself.

- *Due to the cities demand (holding our building permit ransomed), in 2007 we compromised and built one sign 200 sq ft sign on the corner, instead of two 100 sq foot sign s one on 400 North and the other 100 ft sign on 200 West*
 - *200 foot sign was granted and variance approved on our building permit and site plan*

This reason is not a basis for an appeal as it does not alleged an error in the decision by the land use authority. As a de-novo review, the Appellant and City stipulated to the current sign being approved and legal without agreeing on the history of how it was approved. The original approval is not under review and has no relevance to whether the Application should be approved or denied.

- *We have a legal nonconforming sign the repairs will not increase any current nonconformity*
 - *We have a right to repair and maintain our sign*

The argument that the Appellant has the right to repair and maintain its sign corresponds with the third argument in the Summary Argument and the arguments in the Summary Arguments in that BCLUC allows certain updates as part of sign maintenance. Further, Appellant argues that the BCLUC has internal conflicts, is inconsistent, and can be read to have accomplish the City's goals and to have already been approved when the sign was acknowledged as a legal noncomplying sign.

During the Hearing, the Appellant's strongest point regarding the internal conflicts, inconsistencies and the different readings of the BCLUC in regards to noncomplying signs is that while the goal of "eventual elimination" of noncomplying signs through "strictly construing limits on change, expansion, alteration, abandonment, and restoration" this excludes maintenance and repair and further there is an exception for a "face change" that does not encroach or create a hazard. Appellant argues that even if the Application is deemed not to be maintenance and repair, the exception for face change would allow all of the proposed scope of work on the Application.

As stated herein, Utah law requires the appeal authority to interpret the land use regulation in favor of the application unless the regulation clearly restricts the application. *UCA § 10-9a-707(4)*. BCLUC defines the face of a sign as the area where copy is placed not the copy itself.

While this is a close issue, even construing the interpretation of the BCLUC in favor of the Application, the definition of the face of a sign combined with BCLUC definitions of sign

alteration and to construe the requirements strictly with the goal of eliminating the signs supports a reading of the BCLUC that the area, meaning here materials, where the copy is placed can be changed but not the copy or components itself.

This understanding of the BCLUC would not allow items A or C from the Application's scope of work, but could allow item B as to the materials used for the sign but not for any changes in the design of the logo and lettering. As detailed in the findings, the Application proposes design changes to the lettering on the sign.

- *Request a variance to be considered C-H*
 - *200 West and 400 North are main arterial streets and for Bountiful, Utah and should be Zoned C-H with relation to sign ordinances*

This reason is not a basis for an appeal as it does not alleged an error in the decision by the land use authority. As a de-novo review, the Appellant did not make this argument during the hearing and gave no evidence to support it.

- *Main street to 500 West (highway 89) on 400 North should be considered a C-H zone with relation to sign ordinances*

This reason is not a basis for an appeal as it does not alleged an error in the decision by the land use authority. As a de-novo review, the Appellant did not make this argument during the hearing and gave no evidence to support it.

- *City planners followed a new interpretation of the ordinances when the request for maintenance was submitted. After meeting on 5/12/2021 it was verbally agreed that all the repairs would not increase the degree of nonconformity.*

This reason is not a basis for an appeal as it does not alleged an error in the decision by the land use authority. As a de-novo review, the Appellant did not make this argument during the hearing and gave no evidence to support it.

- *City failed to respond to our sign permit within a timely manner multiple times. The most recent being, three weeks after our letter stating we are moving forward with the project because we had not received a response for our initial request.*
 - *Discrimination*

As an alleged error or under a de-novo review, failure to respond timely was not argued in the Hearing and was not raised or preserved when all objections were requested. Discrimination was raised and argued during the Hearing. However, under an error or de-novo review, no evidence was provided showing that similarly situated sign owners were being treated better than the Appellant.

- *Compensation from the City for Negligence, Discrimination and Loss Revenue*
 - *The City failed to fairly apply city ordinances and violated our constitutional rights including but not limited to our 1st, 5th and 14th amendment rights*

- *Due process*
- *Do not respond in a “timely manner” over 5 ½ months to respond*
- *“Rip Cord effect”*

As an alleged error or under a de-novo review, other than discrimination, which was addressed in the reason above, the Appellant did not argue any of these reasons, nor did the Appellant provide evidence of the reasons during the hearing.

- *Petition the city to allow us to remove the “box” to properly sandblast and paint the sign*
 - *This allows us to limit the potential traffic issues that could arise from repairing the sign on site*
 - *This will limit the environmental impact of sandblasting and painting the sign on site*

This reason is not a basis for an appeal as it does not alleged an error in the decision by the land use authority. As a de-novo review, the Appellant did not make this argument during the hearing and gave no evidence to support it.

- *Violated our Constitutional rights*
 - As an alleged error or under a de-novo review, other than discrimination, which was addressed in the reason above, the Appellant did not argue any of these reasons, nor did the Appellant provide evidence of the reasons during the hearing.
- *Violated Utah State Law*

This reason is one of the main arguments made by the Appellant and is well addressed in both the Supplemental Appeal and the Summary Argument. There are two arguments made by the Appellant. First, that BCLUC conflicts with State law in that the Bountiful definition of alteration for signs is more restrictive than State statute. Second, that BCLUC is discriminatory and confiscatory in conflict with case law.

As to the conflict in definition of alteration, the Appellant points out that the Utah Code specifically states that a “nonconforming use may be extended through the same building, provided no structural alteration of the building....” *UCA § 10-9a-511*. The Appellant applies this statute to the sign stating that as long as the structure of the sign is not changed, then the Application should be approved, as the City’s definition of alteration of a sign is much more restrictive in that it goes beyond structural changes to changes in the copy, lighting and other features.

At first glance, the Appellant argument makes sense, however, it does not withstand scrutiny. The statute allows the extension of a nonconforming use if no structural alteration is being made, but purposefully leaves out a noncomplying structure which is address in the previous subsection of the Statute. In this case, there is no argument that the use should be expanded to other parts of the structure, as the structure’s entire use is as a sign. Therefore the language

allowing an extension to the use in the same building if there is no structural alteration does not apply to this Application for a noncomplying structure, the sign.

The Second conflict the Appellant raised is that Utah law prohibits “Discriminatory” and “Confiscatory” enforcement of city ordinances. As addressed herein, Appellant failed to provide any evidence of discrimination during the hearing each time Appellant raised the issue. Without any evidence under both a review for error and de-novo, the Appellant’s claim cannot be sustained.

While Appellant’s state in the Summary Argument that “documents testimony show that Bountiful City’s denial of the building permit is motivated in part by discrimination against Dr. George and Community Chiropractic,” the Appellant could not make that connection during the hearing. The Appellant did not present testimony and the only document was Exhibit 2, which was a chart of Animated Sign Comparison. No context for Exhibit 2 was provided and though Mr. George was mentioned, no discriminatory or hostile remarks are found on the document.

The Appellant also claims in both the Supplemental Appeal and Summary Argument that the City’s denial conflicts with Utah law as “confiscatory” under the *Gibbons & Reed v North Salt Lake* analysis. This argument also fails scrutiny as it is distinguished by the facts that the change in zoning by North Salt Lake deprived the landowners of their use without allowing them nonconforming legal status. In this case, the City is not depriving the Appellant of the use the property for a sign; rather it is whether the proposed changes of the sign can be made without having to bring the sign in compliance with the current code requirements. Either way, the Appellant is still entitled to the use of the property for a sign.

- *Loss of Revenue*

This reason is not a basis for an appeal as it does not alleged an error in the decision by the land use authority. As a de-novo review, the Appellant did not make this argument during the hearing and gave no evidence to support it.

- *The size, shape, a face content, and 50/50 LED to fixed message will not change with our current repairs*
 - *The planned maintenance and repairs will allow our sign to become more compliant with current ordinances*

This reason is not a basis for an appeal as it does not alleged an error in the decision by the land use authority. As a de-novo review, the Appellant did not make this argument during the hearing and gave no evidence to support it.

- *The maintenance and repairs are to beautify the city*
 - *Community Chiropractic offers free advertising for local HS palys/events, city and state events and local charities*

This reason is not a basis for an appeal as it does not alleged an error in the decision by the land use authority. As a de-novo review, the Appellant did not make this argument during the hearing and gave no evidence to support it.

- *Community Chiropractic has been a staple of Bountiful for 29 years*

- *Including a Time/Temperature sign for 29 years*
- *The sign is the main source of marketing for our business*

This reason is not a basis for an appeal as it does not alleged an error in the decision by the land use authority. As a de-novo review, the Appellant did not make this argument during the hearing and gave no evidence to support it.

Conclusions of Law

The ALJ may not consider the Supplemental Appeal and the Summary Argument as the basis of the appeal except to the extent that they expand on an issue raised in the Appeal.

Decision

Uphold the Bountiful City Planning Department's denial of the Community Chiropractic Sign Permit application located at 395 North 200 West.

May 16, 2022



Ryan W. Loose, ALJ

EX 1

SIGN PERMIT APPLICATION

BOUNTIFUL CITY PLANNING DEPARTMENT

\$70950

DATE OF APPLICATION	VALUE OF PROJECT \$ 120,000
RECEIPT NO.	
TYPE OF IMPROVEMENT NEW <input checked="" type="checkbox"/> REMODEL <input type="checkbox"/> MOVE <input type="checkbox"/> REPAIR <input type="checkbox"/> DEMOLISH <input type="checkbox"/>	DESCRIPTION/PROPOSED USE PYLON SIGN

BUILDING ADDRESS 335 W. 500 S.

OWNER OF PROPERTY DR. DAN GEORGE
ADDRESS 335 W. 500 S.

PHONE CELL
WORK 295-6667 HOME

GENERAL CONTRACTOR ROCKY MTN. SIGN & SERVICE
ADDRESS 8817 S. REDWOOD RD. W. JORDAN, UT 84088

PHONE 568-7740
STATE LICENSE NO 525 4396-5551

ARCHITECT/ENGINEER
ADDRESS

PHONE
STATE LICENSE NO.

ELECTRICAL CONTRACTOR
ADDRESS

PHONE
STATE LICENSE NO.

SUBMIT WITH APPLICATION 2 SETS OF
SITE PLANS
BUILDING FACADE/SIGN STRUCTURE
COPY AREA
(ALL DRAWINGS MUST INCLUDE DIMENSIONS AND/OR BE TO
SCALE)
ENGINEERING SPECIFICATIONS
MEC CHECK (IF NECESSARY)

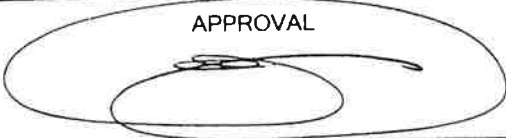
BOUNTIFUL CITY PLANNING DEPARTMENT
CITY HALL
790 SOUTH 100 EAST BOUNTIFUL, UTAH 84010
PHONE (801) 298-6190
FAX (801) 298-6033

APPLICANT'S NAME
DALE HAWKINS

APPLICANT'S SIGNATURE

COMMENTS:

PAID LB

ZONE CG	DATE 05.17.05	APPROVAL 
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INSPECTION NOTICE

Permit # 8140
Date 10/20/05 Time 2:00
Name Center Point
Address 395 No. 200 West
Lot # _____ Subd'n _____
Type posting for sign
Passed Correction Required Other
Violation Re-Inspection Required
Comments _____

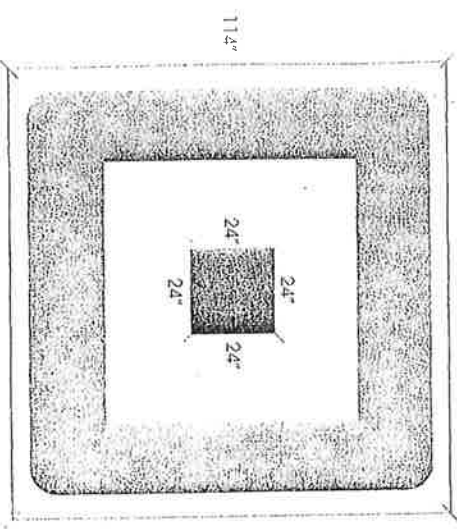
Appears to be ok

Inspector [Signature]

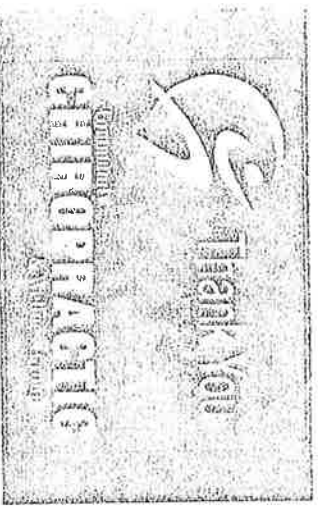
BOUNTIFUL CITY
790 South 100 East - Phone 298-6125

3 sides to have LED and metal routed-out face. The fourth side will have metal routed out face w/ white plex. Corners to be 10" radius.

Multi-Digit Face 255
 Sign Area - 257
 Rectangular Square 259
 50% Page 269 7.



Dimensional View

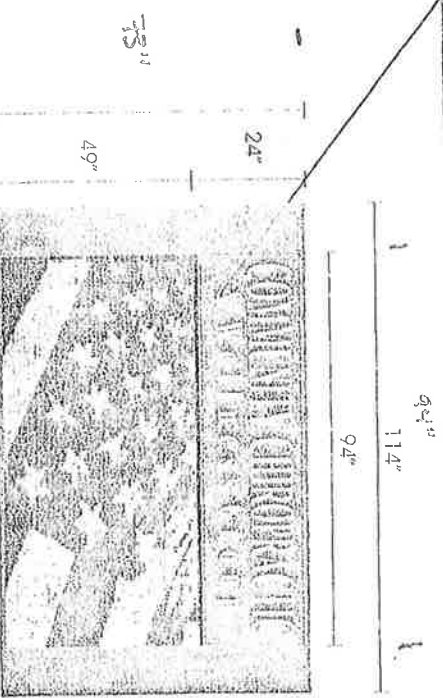


The Square
 94" x 73" = 6,862 sq"
 2.144 = 47.652' x 2'
 19.91611 overall sq. ft.

95.958' LED 95.958' R.F.

Dark Bronze
 PMS 405c

Dark Bronze
 PMS 405c



9" clearance

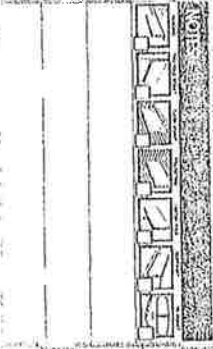


357 W. 3160 S. Suite 4 Murray, Utah 84107
 Office 801 298-1919 Fax 801 298-1587
 www.electrovision.com

NOTE: This original unmodified drawing is created by and is the sole property of Electrovision Signs & Displays, Inc., excepting only the routed artwork. This drawing is submitted only in connection with a proposal being prepared for you and the customer you represent. It is to be employed to ensure accurate reproduction of the sign. It is not to be used for any other purpose without the written consent of Electrovision Signs & Displays, Inc. It is hereby acknowledged that the customer is responsible for the accuracy of the information provided.

Purchaser: Dr. Dan George
 Job Name: Community Chorus
 Address: 400 North 200 West
 Salesperson: Brock Bradshaw
 Computer File: PMS/EBrooks/Comm.Chir/Face options
 Drawn By: D Job No: _____

Phone No. 801 298-9967



3/21
 Call to Numbers on the drawing
 provides color key for process

EX 2

Animated Sign Comparison

<u>Store</u>	<u>Zone</u>	<u>Area</u>	<u>Height</u>	<u>LED %</u>	<u>Animation</u>
Walgreens 00	CH	125/160*	25/30	< 50%	Constant
B Plaza 02	CH	160/160*	28/30	< 50%	Constant
Duerden's 03	CG	/60	15/15	> 50%	Constant
Marberger's 05	CG	NA/160	N/A	< 50%	Constant
Kay Riley 05	CH	94/94*	18/30	< 50%	Constant
George 06	CG	192/160*	17/15	< 50%	Constant

*

Morris Travel

575 N 500 W

Do we really want the ordinance limiting animation?

Take Dan George out of the equation, and consider the ordinance on its merits.

State of the art

Wave of the future

Attracting business

Protest from businesses

Never told anyone about restriction

Skateboard ramp

We could keep the ordinance as it is, repealed it completely, or permit only monochromatic (single color on black background)

If you really want the ordinance, we will be glad to enforce it. I just want to make sure it is what you really want.

ALS - 11/8/2021

EX 3



ALT 11/8/2021

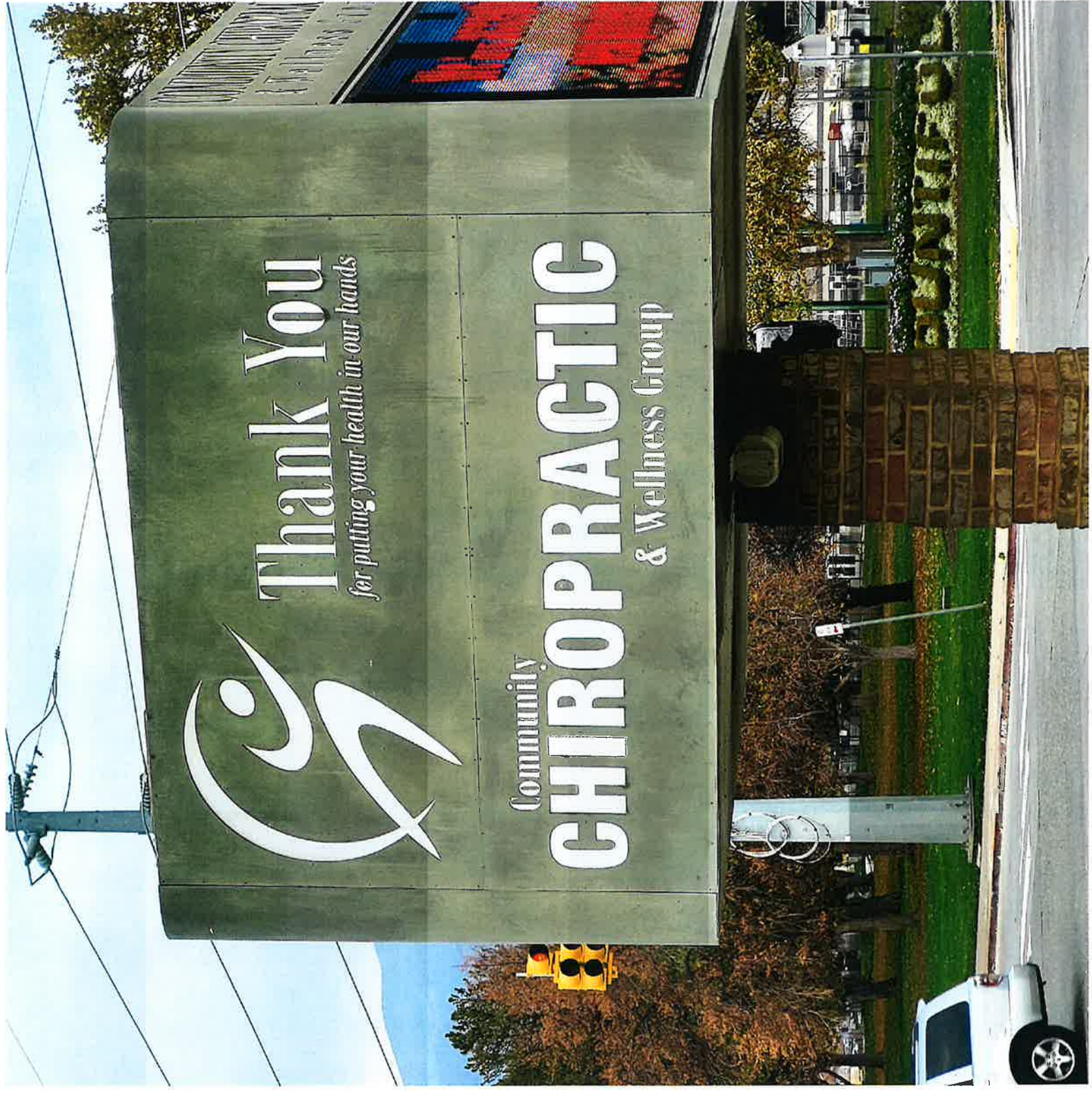


ALS 11/8/2021

COMMUNITY CHIROPRACTIC
& Wellness Group



ALS 11/8/2021



Thank You
for putting your health in our hands



Community
CHIROPRACTIC
& Wellness Group

