

STATE OF INDIANA)	MONROE COUNTY CIRCUIT COURT
) SS:	
COUNTY OF MONROE)	CAUSE NO. <u>53C06-2210-PL-002156</u>

LAMAR ADVANTAGE GP COMPANY, LLC)
a/k/a LAMAR OUTDOOR ADVERTISING,)
)
Plaintiff,)
)
vs.)
)
CITY OF BLOOMINGTON BOARD OF)
ZONING APPEALS,)
)
Defendant.)

VERIFIED COMPLAINT FOR JUDICIAL REVIEW

The Plaintiff, Lamar Advantage GP Company, LLC a/k/a Lamar Outdoor Advertising (“Lamar”), by counsel, for its VERIFIED COMPLAINT FOR JUDICIAL REVIEW against the Defendant, the City of Bloomington Board of Zoning Appeals (the “BZA”), states as follows:

PARTIES

1. Lamar is a limited liability corporation organized and existing under the laws of the State of Delaware.
2. Lamar conducts business in the State of Indiana, doing business from 5711 W. Minnesota Street, Indianapolis, Indiana 46241.
3. Lamar, among other things, owns and operates outdoor advertising signs used for the dissemination of both commercial and noncommercial speech.
4. The City of Bloomington is a municipality organized and existing under the laws of the State of Indiana.

5. The BZA serves as the Board of Zoning Appeals for the City of Bloomington, and the BZA is organized and existing under the laws of the State of Indiana.

6. The BZA is responsible for, among other things, hearing appeals of administrators and approving or denying applications for variances.

7. The BZA conducts its meetings at 401 N. Morton Street, Room 115 in Bloomington, and its mailing address is 401 N. Morton Street, Suite 130, Bloomington, IN 47404.

JURISDICTION

8. This Court has jurisdiction over this dispute pursuant to Ind. Code § 36-7-4-1602.

FACTUAL BACKGROUND

9. In July of 2007, the City of Bloomington and Hoosier Outdoor Advertising Corporation (“Hoosier Outdoor”) entered into an Agreement Regarding Signs and Billboards (the “Agreement”). A true and accurate copy of the Agreement is attached hereto as Exhibit A.

10. Pursuant to the terms of the Agreement, Hoosier Outdoor agreed to remove a four panel outdoor advertising sign from South College Avenue and, in exchange, the City of Bloomington agreed to support Hoosier Outdoor’s variance petition to construct a two panel outdoor advertising sign at a location acceptable to both Hoosier Outdoor and the City of Bloomington.

11. Sometime after 2007, Lamar acquired certain assets from Hoosier Outdoor, including Hoosier Outdoor’s rights under the Agreement.

12. On October 19, 2010, Lamar filed an Application to the BZA for a variance to construct a two panel outdoor advertising sign at 1800 N. Kinser Pike in Bloomington, Indiana. A true and accurate copy of the Application is attached hereto as Exhibit B.

13. As part of the Application, Lamar provided with BZA with a visual depiction of the two panel outdoor advertising sign. A true and accurate copy of the visual depiction is attached hereto as Exhibit C.

14. On December 16, 2010, with the City of Bloomington's support, the BZA heard Case No. V-42-10 and approved Lamar's Application.

15. On January 31, 2011, the BZA issued a Notice of Approval to Lamar. The Notice of Approval stated that Lamar's Application was approved with only two conditions: (1) Lamar "must receive a sign permit prior to sign installation," and (2) the "sign shall be permitted to be lit within the standards of the Unified Development Ordinance (UDO)." A true and accurate copy of the Notice of Approval is attached hereto as Exhibit D.

16. On July 13, 2011, the City of Bloomington issued a permit to Lamar to construct a two panel outdoor advertising sign at 1800 N. Kinser Pike in Bloomington, Indiana and, thereafter, Lamar constructed the two panel outdoor advertising sign.

17. Over the course of the next several years, technological advances in outdoor advertising made it both possible and feasible to equip the two panel outdoor advertising sign with digital faces instead of advertisements printed on vinyl and stretched across a metal frame.

18. On November 15, 2021, Lamar obtained an Electrical Permit from the City of Bloomington to convert the two panel outdoor advertising sign to a two panel digital outdoor advertising sign and, thereafter, Lamar converted the two panel outdoor advertising sign into a two panel digital sign (the "Digital Sign").

19. In converting the two panel outdoor advertising sign to a Digital Sign, Lamar utilized the same foundation, the same pole, and the same frame.

20. In a letter dated April 25, 2022, the City of Bloomington issued a Notice of Violation (the “First Notice of Violation”) to Lamar and alleged that the Digital Sign was a “lawful non-conforming sign” that needed to be removed or restored. The City of Bloomington also threatened Lamar with a variety of fines. A true and accurate copy of the letter dated April 25, 2022 is attached hereto as Exhibit E.

21. In a letter dated May 2, 2022, counsel for Lamar responded to the City of Bloomington and explained that the First Notice of Violation was issued in error because, among other things, the BZA had approved the Digital Sign and the Notice of Approval specifically allowed for lighting within the standards of the Unified Development Ordinance. A true and accurate copy of the letter dated May 2, 2022 is attached hereto as Exhibit F.

22. In an email dated May 13, 2022, Mike Rouker, the City Attorney for the City of Bloomington, advised Lamar that the City of Bloomington was withdrawing its First Notice of Violation. Mr. Rouker also specifically stated that “the matter is considered closed.” A true and accurate copy of the email dated May 13, 2022 is attached hereto as Exhibit G.

23. In a letter dated June 10, 2022, however, the City of Bloomington issued another Notice of Violation (the “Second Notice of Violation”) to Lamar and, this time, alleged that the Digital Sign was an “electronic reader board” that violated the Unified Development Ordinance (the “UDO”) and needed to be reworked or restored. The City of Bloomington also threatened Lamar with a variety of fines. A true and accurate copy of the letter dated June 10, 2022 is attached hereto as Exhibit H.

24. In a letter dated June 17, 2022, counsel for Lamar responded to the City of Bloomington, appealed the Second Notice of Violation, and explained that the Second Notice of Violation was issued in error because, among other things, the electronic reader board provision

of the UDO was not applicable to the Digital Sign **and** the Notice of Approval specifically allowed for lighting. A true and accurate copy of the letter dated June 17, 2022 is attached hereto as Exhibit I.

25. The City of Bloomington did not respond to the letter dated June 17, 2022 and, instead, docketed Lamar's appeal for a hearing before the BZA.

26. On September 22, 2022, Lamar's appeal was heard before the BZA (the "September 22 Hearing").

27. Alan Townsend and Jason Graham participated in the September 22 Hearing and presented evidence on behalf of Lamar.

28. At the September 22 Hearing, Lamar demonstrated, among other things, that the City of Bloomington, by and through its legal counsel, resolved any disputes concerning the Digital Sign by advising Lamar, in an email dated May 13, 2022, that "the matter is considered closed."

29. At the September 22 Hearing, Lamar demonstrated, among other things, that the Notice of Approval issued by the BZA on January 31, 2011 imposed only two conditions:

The Board of Zoning Appeals heard case V-42-10 on December 16, 2010, in the Council Chambers of Showers Center City Hall - Bloomington, Indiana. The petition for a variance to allow an off-premise sign (billboard relocation) was approved with the following conditions:

- 1. The petitioner must receive a sign permit prior to sign installation.**
- 2. This sign shall be permitted to be lit within the standards of the Unified Development Ordinance (UDO).**

30. At the September 22 Hearing, Lamar provided the BZA with a Light Study demonstrating that the Digital Sign complied with the lighting requirements of the UDO. A true and accurate copy of the Light Study is attached hereto as Exhibit I.

31. At the September 22 Hearing, Lamar demonstrated, among other things, that the City of Bloomington, for more than a decade, had never taken the position the UDO applied to the two panel outdoor advertising sign in any manner except for lighting.

32. At the conclusion of the September 22 Hearing, the BZA denied Lamar's appeal by a vote of 3-2 (the "Determination").

33. Lamar has standing to appeal the BZA's Determination because, among other things, (i) the Determination was specifically directed at Lamar, (ii) Lamar has an interest in the Digital Sign, and (iii) Lamar was aggrieved or adversely affected by the Determination.

34. For one or more of the following reasons, the BZA's Determination was (i) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, (ii) in excess of the BZA's statutory authority, or (iii) unsupported by substantial evidence:

- a. The City of Bloomington, by and through its legal counsel, resolved any disputes concerning the Digital Sign by advising Lamar, in an email dated May 13, 2022, that "the matter is considered closed" but then reversed course even though there was no change in circumstances;
- b. The Digital Sign complies with all of the requirements of the Notice of Approval;
- c. The Digital Sign complies with all of the applicable requirements of the UDO;
- d. The City of Bloomington and the BZA, over the course of a decade, never claimed or asserted that the UDO was applicable to the two panel outdoor advertising sign and cannot do so now; and

- e. With the City of Bloomington's encouragement, the BZA approved Lamar's Application for a two panel outdoor advertising sign and, in doing so, confirmed that the UDO was not applicable to the two panel outdoor advertising sign.

35. Under the circumstances and pursuant to Ind. Code § 36-7-4-1003, Lamar respectfully requests that this Court reverse the BZA's Determination.

WHEREFORE, the Plaintiff, Lamar Advantage GP Company, LLC a/k/a Lamar Outdoor Advertising, by counsel, respectfully requests a judgment in its favor and against the BZA (a) reversing the BZA's Determination and instructing the BZA to approve Lamar's Appeal, thereby leaving the Digital Sign intact, (b) awarding Lamar its recoverable costs and expenses incurred as a result of this lawsuit, and (c) providing all other appropriate relief.

I swear or affirm under the penalties of perjury that the foregoing factual allegations are true and accurate.

Dated: 10-17, 2022

A handwritten signature in black ink, appearing to be 'JG', written above a horizontal line.

Jason Graham, for Lamar GP Company, LLC a/k/a
Lamar Outdoor Advertising

Respectfully submitted,

/s/ Alan S. Townsend

Alan S. Townsend
Attorney No. 16887-49
Bradley M. Dick
Attorney No. 29647-49

Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, Indiana 46204
(317) 684-5000 | (317) 684-5173 (FAX)

*Attorney for Plaintiff, Lamar Advantage GP
Company, LLC a/k/a Lamar Outdoor Advertising*

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EXHIBIT A

CITY OF BLOOMINGTON, INDIANA

AND

HOOSIER OUTDOOR ADVERTISING CORPORATION

AGREEMENT REGARDING SIGNS AND BILLBOARDS

THIS AGREEMENT is made and entered into by and between the City of Bloomington, Indiana ("City") and Hoosier Outdoor Advertising Corporation ("Hoosier").

WITNESSETH

WHEREAS, the City and Hoosier have engaged in discussions regarding numerous signs and billboards located within the City of Bloomington; and

WHEREAS, these discussions have included issues of the placement, maintenance and/or removal of particular signs and billboards; and

WHEREAS, the City and Hoosier have now concluded those discussions and wish to memorialize the terms to which they have agreed.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, and in consideration of the mutual benefits which will accrue to each of the parties to this Agreement, the City and Hoosier have agreed, and do hereby agree, as follows:

I. DUTIES AND RESPONSIBILITIES OF THE PARTIES

A. Hoosier Outdoor Advertising Corporation's duties and responsibilities

hereunder shall be as follows:

1. Hoosier shall modernize the existing Cascades Park sign located approximately 200 feet north of the intersection of Old State Road 37 and

North Walnut Street. This modernization shall include the installation of a steel structure upon which the sign will be placed, and the sign modernization shall be performed according to conditions upon which the parties have mutually agreed. If modernization of the sign includes the installation of lighting, the City shall be responsible for obtaining a variance from the Board of Zoning Appeals.

2. Hoosier shall be responsible for timely performance of all maintenance and repair of the Cascades Park sign, including the structure, and shall solely bear all expense regarding such construction, maintenance and repair.
 3. Hoosier shall maintain line-of-sight to the Cascades Park sign.
 4. Hoosier shall remove the four (4) panel billboard located along the west property line at 216 South College Avenue. This removal shall be accomplished on or before the earlier of: (a) the beginning of construction of Phase I of the B-Line Trail anticipated in the spring of 2008; or (b) the installation of the lighted two (2) panel billboard discussed below.
 5. Upon selection of a proposed site which must be approved by the City Planning and Legal Departments, Hoosier may apply to the Board of Zoning Appeals for approval to place a lighted two (2) panel billboard at that location.
- B. The City of Bloomington's duties and responsibilities hereunder shall be as follows:

1. The City shall not seek removal of the two (2) panel billboard located approximately 600 feet north of the intersection of State Road 37 and North Walnut Street on the grounds that it is located on City property without the appropriate permission of the City; however, this billboard remains subject to any and all laws and regulations of Monroe County and the City that may now or hereafter apply. Specifically, the City reserves the right to enforce any and all City regulations including but not limited to provisions of the Unified Development Ordinance concerning lawful nonconforming billboards, at such time as this billboard comes under the City's zoning jurisdiction.
2. The City shall not charge Hoosier lease fees for the continued placement of this billboard in consideration of the responsibilities and costs incurred by Hoosier under the terms and conditions of this Agreement.
3. The City shall support Hoosier's petition before the BZA for placement of the aforementioned lighted two (2) panel billboard in a mutually acceptable location.

II. NOTICE TO THE PARTIES

Whenever any notice, statement or other communication shall be sent to the City or Hoosier, it shall be sent to the following addresses, unless otherwise specifically advised:

A. Notice to the City shall be sent to:

Corporation Counsel
City of Bloomington
401 N. Morton Street
Bloomington, IN 47404

B. Notice to Hoosier shall be sent to:

Jeff Brawley, General Manager
Hoosier Outdoor Advertising Corporation
900 S. Walnut Street
Bloomington, IN 47403

III. AUTHORITY TO BIND

Notwithstanding anything in the Agreement to the contrary, the signatory for Hoosier represents that he has been duly authorized to execute this Agreement on its behalf.

IV. AGREEMENT TERM

The term of this Agreement shall be for five (5) years and may be extended by mutual written agreement of the parties. This Agreement may be modified only by written amendment executed by the City and Hoosier.

V. WAIVER OF DAMAGES

Hoosier, by its execution of this Agreement, expressly waives any and all right to and ~~receipt of damages pursuant to Ind. Code Sections 22-13-2-1.5 and 36-7-2-5.5 regarding~~ any sign or billboard referenced in this Agreement.

VI. GOVERNING LAWS

This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana. Any judicial proceedings shall be filed within Monroe County, Indiana, Circuit Court.

VII. ENTIRE AGREEMENT

This Agreement contains the entire understanding of the parties, and this Agreement supersedes all prior agreements and understandings, oral and written, with respect to this subject matter.

VIII. SUBSTANTIAL PERFORMANCE

This Agreement shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any modification thereof.

IX. TERMINATION

If either party fails to fulfill, in a timely and proper manner, its obligations under this Agreement, or violates any of the terms or conditions contained herein, then the other party shall have the right to terminate this Agreement. Any such termination shall occur only after written notification to the other party of the alleged breach and the allowance of thirty (30) days to cure such breach.

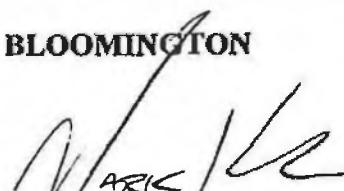
X. JOINT ANNOUNCEMENT

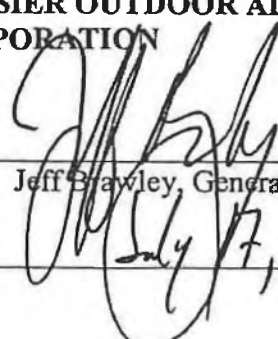
Hoosier and the City agree to develop a joint press release announcing the approval by the BZA for the placement of the lighted two (2) panel billboard. Should the BZA fail to approve Hoosier's request for the placement of this billboard, the terms and conditions of this Agreement shall be null and void.

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed this Agreement on the dates entered below.

CITY OF BLOOMINGTON

HOOSIER OUTDOOR ADVERTISING CORPORATION

By: 
Mark Kruzan, Mayor

By: 
Jeff Brawley, General Manager

Date: 7.24.07

Date: July 17, 2007

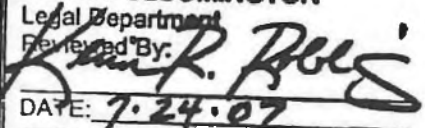
CITY OF BLOOMINGTON
Legal Department
Reviewed By: 
DATE: 7.24.07

EXHIBIT B



City of Bloomington
Planning Department



- PLAN COMMISSION
- PLAT COMMITTEE
- BOARD OF ZONING APPEALS
- HEARING OFFICER

NOV 30 2010

CASE# V-42-1.0
 FILING DATE 10/22/10 cl#
 FILING FEE \$ 200.00 1350
 HEARING DATE 12/16/10
 HT ACCT# 16803
 PLANNER: TM/PS

Project Name Lamar Advertising Billboard Replacement
 Address of Property 1800 N. Kinser Pk.
 Applicant's Name Lamar Advertising Co. Phone (317) 484-0896
 Address 5711 W. Minnesota, Indianapolis, IN 46241 Fax (317) 460-1945
 Applicant's Email Address civerson@lamar.com
 Owner's Name Royers Group, Inc. Phone _____
 Address P.O. Box 25250, Nashville, TN 37202 Fax _____
 Counsel or Consultant _____ Phone _____
 Address _____ Fax _____
 Consultant's Email Address _____

Application Type (Office Use Only):

Plan Commission/Plat Committee

- Change of Zone (ZO)
- Site Plan Review (SP)
- Planned Unit Development (preliminary plan) (PUD)
- Planned Unit Development (final plan) (PUD)
- Preliminary Plat Review (DP)
- Final Plat Review (DP)

BZA/Hearing Officer

- Appeal from Administrative Decision (AA)
- Conditional Use (CU)
- Variance (V)
- Use Variance (UV)

Description of Request: Variance to allow an off-premise sign (billboard relocation)

This application must be accompanied by all required submittals and plan elements, as indicated for the requested approval. Submittal of plans for review by City of Bloomington Utilities is required at or prior to time of application. Present CBU verification of receipt of plans at time of filing. Applicants are required to meet with a planner to review their request prior to filing an application. No applications will be accepted without prior Staff consultation. Staff reserves the right to schedule hearing dates for petitions subject to complete submittals and previously filed cases. Notices to adjacent property owners should not be mailed until hearing dates have been confirmed.

I (we) agree that the applicant will notify all adjacent property owners at the applicant's expense.
 I (we) further agree that the Planning Department will cause a legal notice of this application to be published in a paper having general circulation in Bloomington at the applicant's expense.
 I (we) certify that all foregoing information is correct and that I (we) are the owners (legal agents for owners) of property subject to this application and authorize Staff to inspect the site as needed.
 If applicant is other than recorded owner, an affidavit designating authority to act on owner's behalf, must accompany this application.

Applicant Signature: [Signature] Date: 10/22/10 Staff Initial: TM

401 N. Morton Street · Bloomington, IN 47404 **City Hall** Phone: (812) 349-3423 · Fax: (812) 349-3535
 www.bloomington.in.gov
 e-mail: planning@bloomington.in.gov

EXHIBIT C

- REVISED SITE PLAN -



WHAT A WEEK!
A SALUTE TO ACADEMY'S CS, ARTS, AND ATHLETICS
CELEBRATE IN October 13-21



LAMAR

OUTDOOR ADVERTISING

Proposed 10' 6" x 36' Bulletin with Top Mounted Light Fixtures

St. Road 46 - Front View Panel Facing

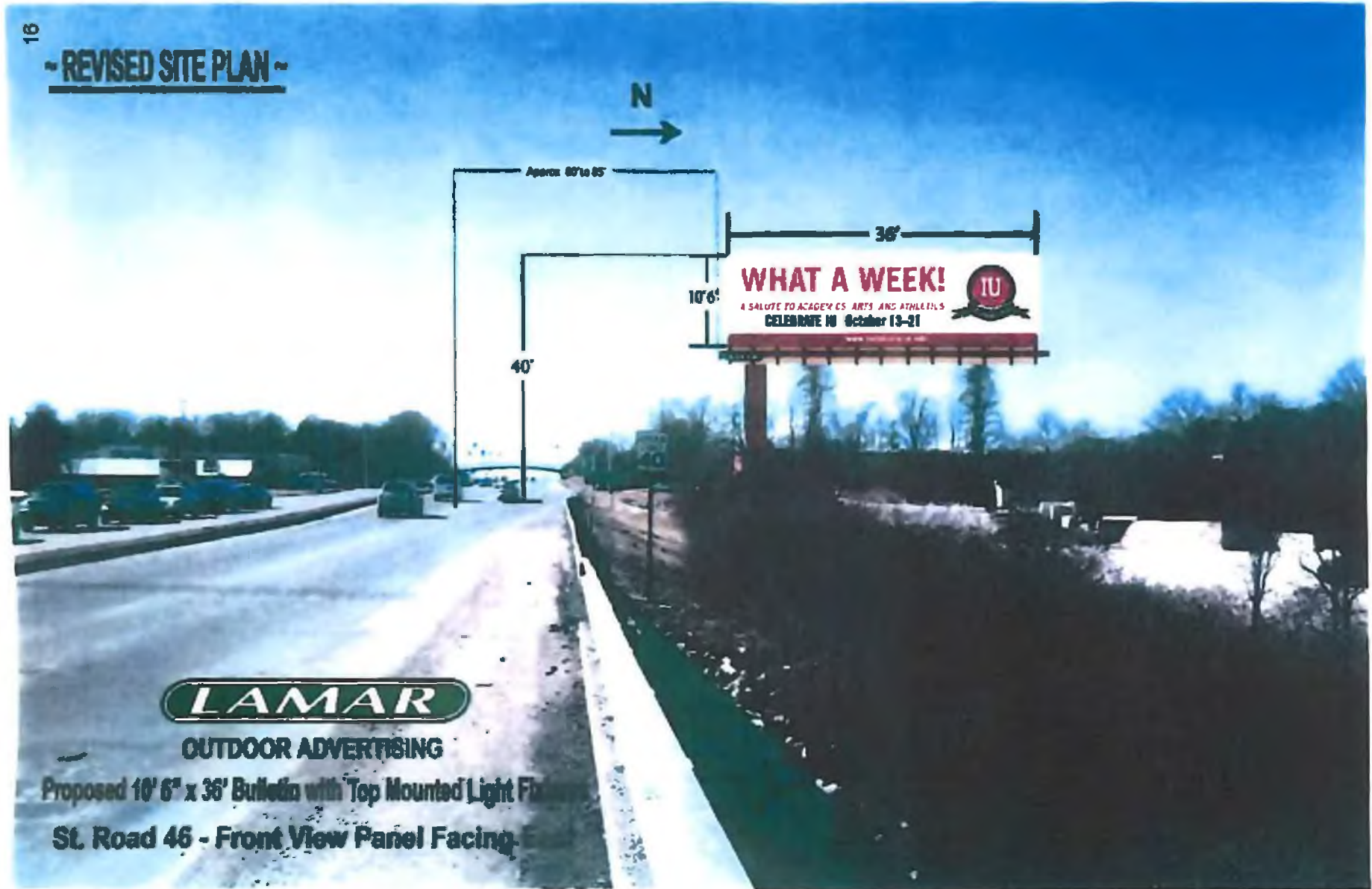


EXHIBIT D



City of Bloomington

FILE COPY

January 31, 2011

NOTICE OF APPROVAL

Petitioner: Lamar Advertising Co.
Location: 1800 N. Kinser Pike

The Board of Zoning Appeals heard case V-42-10 on December 16, 2010, in the Council Chambers of Showers Center City Hall - Bloomington, Indiana. The petition for a variance to allow an off-premise sign (billboard relocation) was approved with the following conditions:

1. The petitioner must receive a sign permit prior to sign installation.
2. This sign shall be permitted to be lit within the standards of the Unified Development Ordinance (UDO).

Unless otherwise specified by the Board at the time of approval, any order or variance granted by the Board of Zoning Appeals shall expire:

- A. In the case of new construction or modifications to an existing structure:
 1. Two years after the date granted by the Board, unless a building permit has been obtained and construction of the structure or structures has commenced; or,
 2. At the date of termination established by the Board as a condition or commitment if different from (1) above.
- B. In the case of occupancy of land which does not involve new construction:
 1. Two years after the date granted by the Board, unless an occupancy permit has been obtained and the use has commenced;
or

FILE COPY
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2. At the date of termination established by the Board as a condition or commitment if different from (1) above.
- C. If an Appeal by writ of certiorari is taken from an order granting a variance, the time during which such Appeal is pending shall not be counted in determining whether the variance or order has expired under Subsections A and B of this Section.
- D. The Board may provide by rule for the granting of extensions of variances.

Planning Staff

EXHIBIT E



RECEIVED

**City of Bloomington
Planning and Transportation Department**

BY:

April 25, 2022

Rogers Group, Inc.
P.O. Box 25250
Nashville, TN 37202

Lamar Advertising Company
Indianapolis Billboard Office
5711 West Minnesota Street
Indianapolis, IN 46241

Irving Materials, Inc.
1800 North Kinser Pike
Bloomington, IN 47404

Re: Notice of Violation (warning)
Nonconforming Signs
Failure to Obtain a Certificate of Zoning Compliance (CZC)

Dear Sir or Madam:

This Notice of Violation (NOV) serves as a formal warning of non-compliance with Unified Development Ordinance (UDO) Section 20.06.090(g) [Nonconformities; Nonconforming Signs] and Section 20.06.050(f) [Development Permits and Procedures; Certificate of Zoning Compliance] at **1800 North Kinser Pike**. Records show that you are the owner or lessee at this property.

The City of Bloomington Planning and Transportation Department received multiple complaints on 3/30/2022 that the existing billboard on the north side of State Road 45 and 46 Bypass between North Kinser Pike and North Walnut Street had been modified to become a digital billboard. On 4/1/2022, staff observed a digital billboard in operation at this location with digital content that changed approximately every eight seconds. The billboard is located on property with the address of 1800 North Kinser Pike, which is a quarry operated by Irving Materials Inc. (IMI) and is owned by Rogers Group, Inc. Records indicate that the billboard itself is owned by Lamar Advertising Company, and is currently operated as Panel #6033 classified as a "Permanent Bulletin – Digital." See the attached screenshot from the Lamar website.

The City of Bloomington Unified Development Ordinance (UDO) lists off-premises signs as a Prohibited Sign Type, including billboards such as the billboard at 1800 North Kinser Pike. In addition, the allowed maximum area of a freestanding sign varies by zoning district and property use, but in no case is greater than 125 square feet. Existing billboards that predate the adoption of these provisions in the UDO are deemed lawful nonconforming signs and are subject to the provisions of UDO 20.06.090 [Nonconformities].

According to Unified Development Ordinance (UDO) **Section 20.06.090 (g) [Nonconforming Signs];**

(1) Generally

(A) Notwithstanding any other provision of this chapter or this UDO, a lawful nonconforming sign may not be altered, relocated or expanded, which includes any increase in height or area, except as expressly provided in this Section 20.06.090(g).

