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Posted By: Evelyn Baker
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**MINUTES OF A SPECIAL MEETING
OF THE
JACKSON COUNTY
BOARD OF COMMISSIONERS
HELD ON
MARCH 25, 2010**

The Jackson County Board of Commissioners held a Special Meeting on March 25, 2010 at 6:00 p.m., Justice & Administration Building, 401 Grindstaff Cove Road, Room A201, Sylva, North Carolina.

Present: Brian T. McMahan, Chairman	Ken Westmoreland, County Manager
Tom Massie, Vice Chair	Evelyn B. Baker, Clerk to the Board
William Shelton, Commissioner	W. Paul Holt, County Attorney

Absent: Commissioners Mark Jones and Joe Cowan

Chairman McMahan called the meeting to order and stated the purpose of the special meeting is to hear an appeal by Wayne Smith d/b/a Jack-in-the Box, Inc. of the Planning Board's January 14, 2010 decision concerning an application for an off-premise sign permit. He read a Memorandum dated February 22, 2010 which describes the hearing protocol. Each of the three parties will be allowed to present oral arguments based on the record, but no additional testimony or new evidence of any kind can be submitted.

(1) **Wayne Smith, Appellant, representing himself**, offered the following argument: He complied with all requirements when he applied for a permit to upgrade his sign. He was incorrectly informed that the Santa's Land sign already on the premises was a legal permitted sign. The decision to deny him a permit was based on a private contract which should not have been considered by the sign enforcement officer. He was informed he did not have a legal right to remove the sign. Santa's Land should not have been allowed to participate in any of the hearings. He requested the Board to overrule the decision and issue him a permit.

(2) **Michael Egan, Attorney representing the sign enforcement officer**, offered the following argument: The issue is whether the planning board correctly upheld the decision of the sign enforcement officer. Section 22-35(3)a of the Code provides for minimum spacing between off-premise advertising signs of 500 feet along the same side of the road. Mr. Smith's application clearly proposed to replace an existing sign; however, there was already another existing sign (Santa's Land) within 500 feet of this sign. Mr. Smith requested that the sign enforcement officer hold his application in the event something happened to the other sign. Subsequently, Santa's Land, owner of the existing sign, filed an application to replace its existing sign with a new one on an adjacent parcel. There is no question there was an existing sign within 500 feet of Mr. Smith's proposed sign. In order to resolve the dispute between the two parties wanting to

place a sign in the same vicinity, the sign enforcement officer convened a meeting with attorneys for each of the parties to resolve the legal issues. At that meeting, Attorney David Moore, representing Mr. Smith, was asked if his client had the legal right to remove the existing sign and he responded “no, he did not”. Based on that response, the sign enforcement officer made the decision that a permit could not be issued to Mr. Smith.

Section 22-71 of the Code states: *The sign enforcement officer shall refuse to issue a permit for a proposed sign that will not conform to this chapter and shall notify the owner of the proposed sign by first class mail as to why the proposed sign does not comply.* This was done. Once Mr. Moore, as the agent and attorney for Mr. Smith, stated that his client did not have the legal right to remove the sign, it was very clear that a permit could not be issued to Mr. Smith. In denying Mr. Smith’s application for an off-premise advertising sign, the sign enforcement officer had good cause and acted reasonably, responsibly and legally. Mr. Egan requested the planning board’s decision be affirmed.

(3) **Michael McConnell, Attorney Representing Santa’s Land**, offered the following argument: He agreed with Mr. Egan. Santa’s Land had a contract with a landowner, received a permit from the county for a small billboard sign, and continued with that contract for several years. Later on, the landowners gave Mr. Smith an easement for the land; however, Santa’s Land retained ownership of the sign. Before these issues arose, Santa’s Land was already involved in internal discussions about moving its sign. Santa’s Land filed an application and was issued a permit to move the sign. During this process, Mr. Smith applied for a permit to place a bigger sign at the same location where Santa’s Land had an original sign. The reason Mr. Smith does not have the authority to remove the sign is because paragraph 4 of the Billboard Sign Lease (Exhibit D of the record) states: *All material used in constructing the sign on the above premise is the property of the Lessee and may be removed at any time upon giving the Lessor twenty (20) days notice. It is expressly agreed and understood that all advertisements and Bulletin Boards placed thereupon shall remain the property of Santa’s Land, Inc.*

Santa’s Land had a permit and maintained ownership of the board. State law states the permit holder shall be the owner of the board. Santa’s Land moved its sign to a different landowner, but within 500 feet of the original location. The sign enforcement officer followed the requirements stated in the ordinance. During the first appeal, he requested party status which was granted with no objection. Mr. Smith’s statement that Santa’s Land sign was erected illegally is untrue, not a part of the record and should not be considered. Mr. McConnell requested the planning board’s decision be affirmed.

(4) In rebuttal, Wayne Smith, stated the following: The county should not be allowed to review private contracts. If the private contract was not in the equation, then he would have been issued a permit. The private contract should have been handled through the legal system.

Commissioner Massie stated it appears the decision was based on Section 22-35(3)a of the Code which specifically states there cannot be two billboards within 500 feet of each other on the same side of the road. Chairman McMahan and Commissioner Shelton concurred.

MOTION: *Chairman McMahan moved to affirm the Planning Board's decision. Commissioner Massie seconded the Motion. Motion carried by unanimous vote.*

Commissioner Massie recommended the planning board be directed to review the ordinance and consider property owners having an opportunity to construct another billboard in the same position so they are not forced out of the process and to clarify the open-ended process of holding permits. The recommendations are to be made to the Board of Commissioners who will then schedule a public hearing.

Commissioner Shelton stated the ordinance should be amended, but be limited in scope addressing a specific problem and not rewrite the entire ordinance

There being no further business, Commissioner Shelton moved that the meeting be adjourned. Commissioner Massie seconded the Motion. Motion carried by unanimous vote and the meeting adjourned.

Attested By:

Approved:

Evelyn B. Baker, Clerk to the Board

Brian Thomas McMahan, Chairman