

**TONGANOXIE BOARD OF ZONING APPEALS
MINUTES
DECEMBER 1, 2011**

Call to Order – The Tonganoxie Board of Zoning Appeals met on December 1, 2011 to consider an appeal of administrative staff interpretation of the City of Tonganoxie Zoning Ordinance requirements in Section 25, Signs, pertaining to an electronic message board (changeable copy sign) and the animation of said electronic message sign installed, and the enforcement thereof, for the West Haven Baptist Church Inc., located at 1000. West St., Tonganoxie KS. Chairman Joel Skelley called the meeting to order at 7:03 pm. Members present were Commissioners; Catherine Patrick, Joel Skelley, John Morgan and Robert Bieniecki. Commissioner Rick Pruden was absent. A quorum was present.

Public Hearing

The Board of Zoning Appeals followed a Public Hearing Script for the Public Hearing. Chairman Joel Skelley explained the Rules of Order and asked each Board of Zoning Appeals members to declare whether they have had outside contacts related to this matter or if they have any interests, financial or property, to disclose in connection with this matter. Roll Call – Robert Bieniecki – none, Catherine Patrick – no, Joel Skelley – no, John Morgan – yes, he is a member of West Haven Baptist Church.

Planning Consultant, Kevin Kokes, AICP, LEED AP BD+C, with Lochner, presented the staff report. He explained that the appeal is of an administrative staff interpretation of a Zoning Ordinance and is about a portion of the sign, the electronic message board. The Board of Zoning Appeals is responsible for hearing and deciding appeals where it is alleged that there is an error of law in any order, requirement, decision, or determination by an administrative official in the enforcement of the zoning ordinance.

The staff interpretation and the appeal for the Church sign is not related to the Church's monument sign on which the electronic message board is located. Mr. Kokes explained it is staff's understanding the monument sign meets the zoning ordinance regarding height requirements, setbacks and size.

Mr. Kokes also reviewed background information and stated the West Haven Baptist Church sign application had been reviewed by the Planning Commission on January 6, 2011. The Planning Commission approved the electronic message board on the monument sign, as allowed by Section 25-021.j.2) and the motion included two conditions as recommended by staff: a.) In Accordance with Section 25-021.D of the City of Tonganoxie Zoning Ordinance, the electronic message sign shall not include animation, or include messages that are animated, moving, flashing, blinking, reflecting, revolving and/or rotating. b.) No increase in the size or height of the monument sign shall be permitted, except as allowed by the Zoning Ordinance.

Mr. Kokes also reviewed the definitions and standards of Section 25 that dealt with electronic message boards and/or changeable copy signs, including animated signs (Section 25-011.3), attention-attracting device (Section 25-011.4). He stated that on January 7, 2011 after the Planning Commission action the City Staff gave verbal approval of the sign permit via telephone to a representative of West Haven Baptist Church and indicated the sign permit approval and

restrictions to the electronic message board. At that time the Church representative was also advised by city staff of the appeal process. Mr. Kokes stated the appeal of the Planning Commission's action was never filed.

When the sign and electronic message board was installed later this year the electronic message board was operating in a manner that was animated, moving, flashing, blinking, reflecting, revolving and/or rotating based on staff observations upon the City receiving a complaint from a citizen. In August 2011, a code violation letter was sent to West Haven Baptist Church by the Building and Codes Enforcement Officer, Mark Lee. The letter explained the sign was in violation of the Planning Commission decision made on January 6, 2011 and the provisions of Section 25. Mr. Kokes stated West Haven Baptist Church contacted city staff and the city council after receiving the code violation letter. Church representatives were advised that the Board of Zoning Appeals has jurisdiction to hear appeals of City administrative staff interpretations of the Zoning Ordinance and filing such as appeal is the appropriate procedure to address the matter.

Mr. Kokes also provided additional background about a similar electronic message board proposed by USD 464 in 2006 for a monument sign at the Middle School on Washington St.. The sign was also approved with the same conditions. At that time staff and the Planning Commission had the understanding from USD officials the electronic message board sign proposed for the Middle School would have a static display and would change no more than once per day. The electronic message board sign was never installed by the school district. However that approval and the informal agreement with USD officials for the operation of the proposed sign was used as the basis for staff recommendations for the similar sign proposed by the West Haven Baptist Church in 2011.

Mr. Kokes again reviewed the definitions, highlighted sub-sections from Section 25, the table of permitted signs in residential districts and highlighted section of Section 26- Board of Zoning Appeals. He stated no matter what the Board's decision related to this appeal, they may recommend to the City Council and Planning Commission that updates to the sign regulations be considered to further clarify any issues related to new sign technologies which were not available at the time the sign regulations were adopted.

The members of the Board of Zoning Appeals did not have any questions or comments at this time.

The Chairman asked for comments from the applicant.

Mark Scribner, 2180 Rock Creek Dr. addressed the Board. He explained he was the applicant and the Associate Pastor of West Haven Baptist Church. Mr. Scribner stated it was never their intent to be bad neighbors and stated their doors are open if residents have complaints. He stated the Church was unaware of the regulation discussed with USD 464 regarding changing the electronic message only once a day. He asked the board what the church staff can do if the Administrative Interpretation is upheld and what will be acceptable on the electronic message board. He stated they would like to be able to change the message several times a day.

The Chairman asked for public comment in favor. No one spoke in favor of the sign at this time.

The chairman asked for public comment in opposition.

Carla Page, 921 West St, stated she lives in the house across the street from the sign and the flashing, blinking and rolling light was very bright and kept her boys up at night. They could not sleep because the electronic message board was flashing and blinking. She also stated the light shines into the living room from their front window. She thinks the Church should have been required to notify surrounding property owners about the proposed sign prior to its consideration by the Planning Commission.

Pam Smith, 236 Outlook Ct., Carla's mother and a registered nurse practitioner, agreed with Carla and stated bright flashing, blinking and rolling lights can cause some people to have seizures. She stated her grandson suffers from this disorder. She also stated 10% of the population or 500 Tonganoxie citizens can have this disorder and it can range from migraine headaches to seizures. She stated she was very worried about people driving at night because the lights were so bright and flashing. She also stated the sign is much better the past few days, it has not been as bright, moving or flashing like it was when it was first installed.

The following comments in favor of the sign were allowed by the Chairman.

Gary Coby, 101 Washington St., stated he also lives across the street. He said the light shines in his kitchen window and his daughter's bedroom window and they do not have a problem with the sign. He stated they have a bigger problem with the lights from the police cars that stop people on West St.

Mike Bronson, 496 13th Ter., Pastor of West Haven Baptist Church, explained they may have gone a bit overboard with their electronic sign at first because it was a new toy. He stated they are currently having some technical issues with the sign and that's why it is not moving. He stated the Church was unaware of the restrictions the Planning Commission placed on the proposed electronic message sign at the Middle School. He felt that changing the message only once a day was not what they intended to do when they invested in the sign. He said they wanted to be able to change the message board more often. Mr. Bronson also stated he felt the sign was an attractive asset and enhances the property and the City of Tonganoxie. He said the Church had no intention of harming anyone when they put up the sign and would like to know what they can do to bring the sign into compliance.

The chairman closed the Public Comment discussion and asked for discussion from the members of the board.

John Morgan asked why the Planning Commission did not include additional verbiage to clarify how often the electronic message could be changed. He did not think the Planning Commission was as specific with the Church sign as they were with the Middle School Sign.

Joel Skelley stated he thought the restrictions were the same, no flashing, moving, blinking, etc. He stated the Planning Commissioners were concerned about the Middle School sign and the West Haven Baptist Church sign because of the bright lights of an electronic message display in areas zoned for residential purposes. Mr. Kokes stated he did not have the Middle School approval details with him tonight, but he thought the recommendations were identical. He thought comments regarding how many times a day the Middle School sign could be changed were discussed at the Planning Commission meeting with the school representatives who attended the meeting. He stated in retrospect it would have been desirable to formalize the

informal agreement with USD officials related to the limited times the sign would change. However Section 25 is clear about how such electronic signs must not be animated or create the appearance of movement.

There was no further discussion from the board at this time.

The Chairman explained to the board members the options for a motion and stated they could:

- Affirm the Administrative Interpretation, wholly or partly; or
 - Reverse the Administrative Interpretation; or
 - Continue the application to another date for further consideration
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- **Robert Bieniecki made a motion** to wholly affirm the administrative interpretation that has been provided and discussed.
 - **Catherine Patrick seconded** the motion.
 - **Discussion – John Morgan** asked if this affirmation defines whether the electronic message board can be used or changed as discussed by West Haven Baptist Church Representatives. The chairman explained the zoning ordinances cannot be changed by the Board of Zoning appeals, any change to the ordinances would have to go through the Planning Commission for review and a Public Hearing before adoption. Catherine stated she felt the sign and the electronic message could be used as long as the message board did not have animation and was not moving, blinking or flashing. Mr. Skelley also stated the Board of Zoning Appeals could make a recommendation to the Planning Commission to review and clarify the sign ordinances. Robert stated he did not wish to modify his motion, he felt if the board wanted to make a recommendation to the Planning Commission it should be done under a separate motion. No further discussion.
 - **Roll Call Vote** – Robert Bieniecki, aye; Catherine Patrick, aye; Joel Skelley, aye; John Morgan, nay.
 - **Motion carried:** Aye 3, Nay 1

Chairman Skelley explained that the decisions of the Board of Zoning Appeals may not be appealed to the Tonganoxie Governing Body or the Tonganoxie Planning Commission. He stated the decision may be appealed by the applicant only to the Leavenworth County District Court.

Mr. Kokes asked for clarification as to whether the Board wanted to provide a recommendation that updates to the sign ordinance be investigated and considered by the Planning Commission. Robert Bieniecki responded no.

With no further business to discuss, there was a **motion by Catherine Patrick** to adjourn the Board of Zoning Appeals meeting. **Second by John Morgan.** All ayes, (4). Motion carried. Meeting adjourned at 7:40 p. m.

Minutes Approved: _____

Submitted by: Patty Hagg