

**AGENDA**

**CITY OF MINNETONKA**

**STUDY SESSION  
WITH PLANNING COMMISSION**

**MONDAY, MAY 14, 2007**

**6:30 P.M.**

**BOARDS AND COMMISSIONS ROOM**

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1. Update from city manager
2. Executive session to discuss the billboard litigation
3. Adjournment of executive session
4. Regulation of dynamic signs
5. Adjournment of study session

Additional Information

Joint Study Session summary December 12, 2006

The purpose of a study session is to allow the city council to discuss matters informally and in greater detail than permitted at formal council meetings. While all meetings of the council are open to the public, study session discussions are generally limited to the council, staff and consultants.

**City Council Study Session Item #4  
Meeting of May 14, 2007**

**Brief Description:** Regulation of dynamic signs.

**Requested Action:** Review recommendations and provide direction.

**Background**

The city of Minnetonka enacted a moratorium on all electronic signs on December 18, 2006, and directed staff to undertake a study to determine if there is a need for amendments to the city's sign ordinance. This action was taken in response to the erection of two digital billboards on I-394 and I-494.

Staff contracted with SRF Consulting to conduct a review of existing studies and other cities' ordinances. Staff also retained the services of Gerald Wachtel, a recognized expert in the study of dynamic signs and advisor to the city of Seattle, Washington at the time that city's dynamic sign ordinance was adopted.

Although the study is not yet finalized, the major conclusions and recommendations of both consultants are incorporated into these staff recommendations. The detailed report will be provided at the time the proposed ordinance is introduced.

**General Framework**

The easiest approach to dynamic signs, from both a legal and enforcement standpoint, is to either prohibit all of them or allow them with no restrictions. Instead, staff recommends consideration of a balanced approach to dynamic sign regulation that protects community interests, while recognizing the need to reasonably accommodate evolving sign technologies.

The term "dynamic" sign is used to identify all signs that have changing messages, regardless of the means. By avoiding descriptions that identify the type of change, such as "electronic," the ordinance can better deal with future technologies that have not yet been developed. This approach also recognizes that changing messages by any means can be distracting to the driving public.

Signs are a form of "speech" protected by federal and state constitutions. As a result, cities must be very careful that sign regulations generally do not discriminate on the basis of message content. It can be a challenge to defend an ordinance that draws fine distinctions when allowing certain kinds of signs to be dynamic while prohibiting others.

Accordingly, staff proposes that dynamic sign provisions "overlay" the city's existing sign regulations. There would be no change to the existing standards regarding such things

as zoning, number, size and location. As a general matter, the dynamic regulations would apply equally to all signs, with few if any distinctions between zoning districts or between on- and off-premise signs.

Although residential districts are deserving of more protection than other zoning districts, that is taken into account in the underlying regulations. Additionally, there are uses in residential districts that could benefit from having changing messages, such as churches, schools and government offices. The recommended approach is to allow dynamic signs in all districts for all uses but to control the potential impacts through appropriate restrictions.

The recommended approach does not include any spacing requirements. Staff believes that spacing restrictions could result in unequal treatment of property owners, since the first property owner to install a dynamic sign could prevent the neighboring property owner from also having a dynamic sign. This would be unfair, and could actually increase the frequency of such uses by creating an incentive for nearby property owners to race each other to convert their signs.

The only locational requirement recommended by staff is to limit dynamic messages to freestanding signs only. Dynamic messages would not be permitted on building signs.

***Discussion question: Should dynamic sign regulation be consistent with the current sign ordinance, and apply equally to all forms of freestanding “dynamic” messages, types of signs and zoning districts?***

Staff recommendations are provided for brightness levels, operational mode, minimum display time and size of the dynamic portion.

### **Brightness Levels**

The consultants determined that the brightness of signs can be distracting, and if very bright, can actually result in a “blinding” effect, particularly at night. Pure white light appears the most bright, and has the most blinding capability.

Unfortunately, there is currently no good way to measure the brightness of signs in the field. Sign manufacturers can measure the light emitted by LED signs in a controlled factory setting by measuring the “nit” level, but those conditions cannot be re-created in actual field conditions. Additionally, the instruments used to measure brightness are currently very expensive.

With no good way of measuring brightness, staff recommends that the city use the general standard adopted by the Wisconsin Department of Transportation: “No [sign] may be illuminated to a degree of brightness that is greater than necessary for

adequate visibility.” The general philosophy is that dynamic signs should have the same appearance as regular signs both during the day and at night.

The recommended ordinance would incorporate a process that allows city staff to make the initial determination, but allows a sign owner to appeal this determination to an independent panel. The appeal panel would consist of one person selected by the city, one person selected by the sign owner, and one person selected by the first two people. This approach was discussed at a meeting with sign industry representatives and appears to be generally acceptable.

In addition, the ordinance would prohibit the use of pure white light, because of its blinding potential. Industry representatives have agreed to help staff define that term.

***Discussion question: Should a general brightness standard be adopted, with an administrative appeal process?***

### **Operational Mode**

Dynamic signs have the capability of operating in many different modes, ranging from static messages to scrolling text to full motion video. These operational modes have obvious implications for the distracting nature of dynamic signs.

The city’s consultants concluded that there can never be definitive proof of a causal connection between dynamic signs and highway accidents. This is because state-of-the-art driving simulators cannot truly simulate real-life conditions. Further, controlled roadway studies cannot be performed, because controlled roadways can not be filled with hundreds or thousands of cars operating under normal conditions. Finally, eye movement studies use a very limited pool of test subjects who are operating under circumstances that are designed to avoid accidents.

Nevertheless, the studies performed to date provide important insight. For example, some studies indicate how drivers tend to react to signs in different settings, while other studies inform how different degrees and types of distraction are associated with accidents. By considering those individual pieces together, the city can thoughtfully evaluate the risks posed by dynamic signage.

Studies do show that there is a correlation between moving signs and the distraction of highway drivers. An eye movement study showed that changing signs may distract drivers by as much as two seconds. The Federal Highway Administration has determined that being distracted for two seconds or more can result in traffic accidents.

Drivers can be distracted not only by a changing message, but also by knowing that the sign has a changing message. Drivers may watch a sign waiting for the next change to occur. Drivers are also distracted by messages that do not tell the full story in one look.

An example is a scrolling sign - people have a natural desire to see the end of the story, and will continue to look at the sign in order to wait for the end.

The consultants also concluded that drivers are more distracted by special effects used to change the message, such as fade-ins and fade-outs. Finally, drivers are generally more distracted by messages that are too small to be clearly seen or that contain more than a simple message.

In response to these conclusions, staff proposes that the ordinance allow only static displays. No animation, motion or video would be permitted. Additionally, the message change would have to be instantaneous, without any distracting effects, such as dissolving, spinning or fading. Sequential messages, such as a two-stage message for a single product, service or business, would also be prohibited. Staff is also considering the possibility of requiring a minimum font size to avoid messages that are too small to easily read or that contain too much information.

***Discussion question: Should the ordinance require instantaneous replacement of static, unrelated images?***

### **Minimum Display Time**

Because staff is recommending against an absolute ban on dynamic signs with static displays, and also that there be no spacing requirements, the minimum display time becomes critical. If the display time is too short, a driver could be subjected to a view that appears to have constant movement. This impact would obviously be compounded in a corridor with multiple signs.

If dynamic signs become pervasive and there are no meaningful limitations on each sign's ability to change frequently, drivers may be subjected to an unsafe degree of distraction and sensory overload. Accordingly, a longer display time is appropriate.

Staff recommends that the minimum display time be set at 20 minutes, which is the standard adopted by the city of Bloomington following its own thorough study. This is less than the one-hour display time that is currently in effect through the district court's temporary injunction, and thus provides greater flexibility to sign owners. There would be an exception for time and temperature signs, which the federal court has recognized as a legitimate exception to limitations on variable message signs.

***Discussion question: Should the minimum display time be set at 20 minutes?***

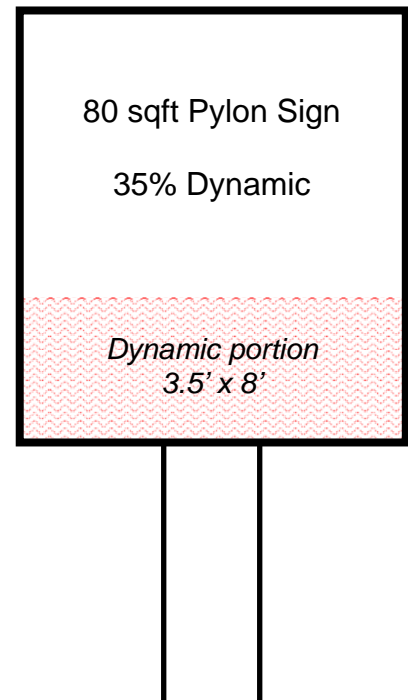
## Size of Dynamic Portion

One objective of dynamic sign regulation is the prevention of driver distraction. Public safety is also protected by ensuring that people can find their way to where they want to go. If “way-finding” is compromised, driving conduct can be adversely affected by last-second lane changes or turns, which could result in traffic accidents.

Staff believes that a significant portion of permitted signs should remain constant, so that identity and location can be more readily determined. Staff also believes that this way-finding purpose should be given significantly more weight than any advertising purpose of a dynamic message. Limiting the amount of sign face that can be dynamic also serves aesthetic and public safety purposes by discouraging the proliferation of multiple changing signs and reducing exposure to the public.

Accordingly, staff recommends that no more than 35 percent of the message area of a permitted sign could contain a dynamic message. This favors way-finding over advertising by a 2:1 factor. Further, structural limits to dynamic capabilities should be enacted to enable enforcement.

***Discussion question: Should the maximum portion of the sign message area be limited to 35 percent?***



## Incentives

Staff also recommends that incentives be provided for the removal of non-conforming signs, specifically billboards. The advent of this technology creates an important community planning opportunity. A single dynamic sign can serve the function otherwise performed by multiple traditional billboards. Thus, outdoor advertising companies ought to be encouraged to use dynamic sign displays to consolidate such activities in appropriate locations while removing traditional billboards from areas where large signs are not appropriate.

The city of Minnetonka previously made a determination that off-premise signs are no longer allowed in the city because they are inherently distracting, and do not serve the need of property owners to identify themselves and their businesses. Those signs remain now as non-conforming uses.

Staff recommends that an off-premises sign be allowed to use a greater portion of the message area for dynamic messages if the owner removes one other off-premise sign,

subject to certain minimum size and other conditions. This one-for-one trade would offset the distraction of a larger message area by removing the inherent distraction from another sign, and would reduce the number of non-conforming signs in the city.

***Discussion question: Should incentives be provided for the removal of non-conforming off-premise signs?***

### **Next Steps**

After staff has received council and planning commission direction on these issues, a draft ordinance will be prepared. The plan is to introduce the ordinance at the June 4<sup>th</sup> council meeting, conduct the public hearing at the June 14<sup>th</sup> planning commission hearing, and adopt the ordinance at the June 25<sup>th</sup> city council meeting. This will meet the deadline of the current moratorium ordinance.

Submitted through:

John Gunyou, City Manager

Originated by:

Desyl Peterson, City Attorney

Ron Rankin, Community Development Director

Julie Wischnack, City Planner

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Council Present: Minnetonka: Council Members Bob Ellingson, Terry Schneider, Al Thomas, Tony Wagner, and Brad Wiersum.

Hopkins: Mayor Gene Maxwell, Hopkins Council Members Kristi Halverson, Bruce Rowan, Jay Thompson and Cheryl Youakim (arrived 6:50 p.m.)

Staff Present: Minnetonka: John Gunyou, GERALYN Barone, Ron Rankin, Lee Gustafson, Julie Wischnack.

Hopkins: Rick Getschow, Jim Kerrigan, Steve Stadler, Kersten Elverum.

Others: Mark Koegler of Hoisington-Koegler, Jim McComb of McComb Group, Craig Twinem of Hennepin County Transportation Department, Hennepin County Commissioner Linda Koblick (arrived 6:40 p.m.), Minnetonka EDA President Peter St. Peter, EDA Members Dan Duffy, Dave Larson, Bunny Robinson and Bob Walker and EDA Student Representative Liz Bayer. Others: Ed Ring, Gary Johnson.

**1. Joint discussion on the Shady Oak Road Redevelopment Plan – detailed redevelopment concepts.**

Gunyou explained the funding cut by Hennepin County and announced Phil Eckert will replace Larry Blackstad at Hennepin County Community Works. He stated the economic development planning should be wrapped up at the end of January, and a joint council meeting will be scheduled following that. He said the numbers should be ready at that time for Hennepin County budget planning. He added Hennepin County is committed to funding the road construction, although there is no capacity for early takings. He assumes funding will be available in next year's county budget, but if not there will be a long-term hole.

In response to a question from Maxwell, Gunyou stated he did not think there was a chance the road will be reduced to three lanes. Twinem stated the roadway and a portion of the acquisitions are funded. Gustafson stated that if community works money is never replaced, cities may have to fund the remainder. Funding availability should be known in 9-12 months. Thomas suggested discussing any contribution from the cities at a later time.

Maxwell stated Hopkins has a larger portion of acquisitions, so the city will have to consider the project carefully. Maxwell asked if the road layout is set as planned. Gunyou replied "yes." Getschow stated that the time line is shorter now, but the project will get done. He noted \$9 million of community works

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funding was lost.

Thompson stated he supported the project based on County funding support and asked how long it would be before receiving information from the County. St. Peter asked how much roadway construction was embedded in the County's funding. Gunyou replied those numbers should be available in a month. Koegler stated a product both cities can use will be ready by the end of January, but it won't be as detailed as design guidelines.

Schneider suggested extending the time line to obtain sufficient details. Duffy asked about other options. Maxwell asked about state or Met Council funding options. Gunyou and Maxwell commented that constructing the road project without redevelopment may not make sense. Robinson asked what county projects were being done in place of this one.

Getshow said an abbreviated redevelopment study was planned to be presented to the County. Based on comments already made, he observed there could be a problem if the cities have to contribute financially to the project. The breaking point is not known yet. Gustafson stated there is time to determine this. Schneider concurred with Thompson regarding the challenges of funding the roadway without redevelopment and suggested the time line should be extended. Wiersum concurred.

Koegler began his presentation by introducing McComb, who he said will give an overview of the market condition. Koegler explained that the planned station stops are ½ mile from the roadway project, which provides an opportunity for the site. He said his plan has two components: areas most impacted (most takings) and areas for long-term planning. The community works funds would be most useful to acquire the VFW, which would open up the most opportunity for redevelopment.

McComb, in his overview, stated that many of the businesses are convenience and service types patronized by locals and those who drive by on Shady Oak Road. The destination businesses are the bowling alley, VFW, appliance and ammunition shops. He said taking 60 feet from the shopping strip doesn't leave room to do anything creative. The convenience-type businesses will lose customers if they relocate. The northwest quadrant appears to be a good relocation site for the convenience businesses. He said in the last five to six years, office condos have taken off below the radar; the use is very diverse and parking demand is low. Users prefer amenities in the back, and there is wetland behind this area (west) that would fill this requirement.

McComb envisioned office or residential to the northeast and residential or other to the southeast. Replying to Mayor Maxwell, McComb stated there is a long-

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term market for office condos, both rental and owner-occupied. Schneider asked about conflicts with Mainstreet businesses; McComb stated this area is not related to the downtown. Regarding housing, he said demand would be there if it was built. St. Peter asked how light rail would impact the area. McComb said it was independent, that it's more about what doesn't happen near station stops. It becomes a bonus for retail, but doesn't change it. Coffee stores, for instance, don't succeed. He stated the northwest quadrant would be the first phase to relocate strip shops. Mayor Maxwell asked about the reaction from homeowners to the south. McComb said he anticipates a new building, which would be a plus for them, and otherwise they are somewhat removed so there would not be much impact.

Koegler presented three land use concepts, with varying densities and residential/mixed/commercial ratios. He defined terms: medium density is 9-13 units; high density is three stories (maybe mixed use) and refers to building form; mixed use, i.e., Excelsior & Grand; office is office condos (can take residential feel); and retail is mixed use or separate one-story (because of parking restrictions). He stated his concepts were based on discussions with the staffs of the cities and the EDA and on current zoning.

Koegler then elaborated on four redevelopment concepts. Following are notes on each:

Concept 1: in-kind replacement; suburban pattern; VFW would be impediment--purposely did not add circulation behind. Shady Oak will not be a pedestrian street, even though it will be improved with sidewalks, etc.

Concept 2: attempts urban street presence-built up to street; mixed use; more office; northwest quadrant housing would be affected by transit station.

Concept 3: interjects housing in Shady Oak commercial area.

Concept 4: maximizes development by structured parking; attracts larger retail; parking ramp could have lower level; architectural elements could be coordinated in all buildings; parity in buildings flanking parking ramp so ramp isn't dominant.

Koegler also showed elevations on the concepts. He stated the plan is to take the options to the public for feedback, assemble that with other sources and comments and present a recommendation in the end of January.

St. Peter questioned the drainage and water table problems on the property across from the pond. Gustafson stated the property will be brought up with the round-about, which will solve the problem.

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Thompson commented that Concept 4 may conflict with Mainstreet. McComb stated he feels the parking ramp is not feasible economically for the tenants; however, what would go there would be so small-space that it wouldn't threaten the downtown.

Schneider stated the options presented to the public should all be options the two councils can be comfortable with. He had reservations about Concept 4 with a lot of commercial and a ramp on the west side, and he also agreed that it is not economically feasible.

Youakim stated she favors residential and office, not retail, near the transit station.

Ellingson mentioned considering entertainment, citing the two major entertainment businesses in the area (VFW and bowling). McComb stated that adding entertainment compounds the parking problem.

Ellingson asked whether the VFW was designated for acquisition. Koegler responded affirmatively, noting the funding sources as community works money. Twinem concurred.

Mayor Maxwell asked for a show of hands to remove Option 4 from consideration. Several persons raised their hands. Duffy stated he would like to see it revised without the ramp and maximizing the residential use. Mayor Maxwell removed the board illustrating Option 4 from the display. Koegler stated that he could include more mixed use in Concept 3 before bringing it to the public. Gunyou asked Koegler to include in his report the implications for the area without community works money.

Youakim asked if the road could be straightened where it meets Mainstreet to create more visual appeal; neighbors expressed this idea to also avoid unintentional traffic.

Mayor Maxwell asked about a late January meeting. Getschow stated it would be similar to this meeting with a wrap-up process and coordination of a message to the County.

Larson asked if there was enough green space. Koegler stated he can get good aesthetics along the street, but can't get a lot more green space. However, it will be better than it is now.

**2. Adjournment.**

Mayor Maxwell adjourned the joint meeting at 8:15 p.m.

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Respectfully submitted,

Shannon Smith  
City of Hopkins