

**MEDINA TOWNSHIP  
BOARD OF ZONING COMMISSIONERS  
REGULAR MEETING/PUBLIC HEARING  
APRIL 21, 2009**

Chairperson Strogin called the regular meeting of the Medina Township Board of Zoning Commissioners to order at 7:33 p.m. Board members Overmyer, Szunyog, Jarrett, Erickson and Strogin were in attendance. Alternate Board members Jim Apana and Michelle Kirda were also in attendance.

The Zoning Commission minutes to the March 17, 2009 meeting were approved as amended. The Trustees have scheduled site plan reviews to be heard on April 30, 2009 at 7:00 p.m. A letter would be sent to the applicants when the Trustees would hear their site plan/signage requests.

**MISC.**

Chair Strogin stated that Wal-Mart is upgrading and expanding their store in Medina Township. They went through site plan reviews for the expansion and signage. Wal-Mart wanted a large amount of signage with this upgrade and expansion and the BZA granted them 475-sq. ft. of signage. Wal-Mart has recently submitted their revised signage and the total square footage is 422 sq. ft. This speaks very well as to what the two zoning boards have done in working with Wal-Mart.

**REGULAR MEETING**

**SITE PLANS**

**Blakslee Park- 3800 Weymouth Rd.**

Mr. Jeff Kessler with the Medina Township Service Dept. represented Blakslee Park. Chair Strogin stated Blakslee Park consists of the new service dept., memorial and ball fields. The signage request is pertaining to the sports field. Mr. Kessler stated he was looking to put up 2 public service signs 24"x 48"=8 sq. ft. The sign says "Welcome to Blakslee Park" and shows a map of how the fields are laid out. The signs are mostly for those who pull in off of Fenn Rd. They can look at the signs and not hold up traffic.

Chair Strogin stated the zoning code allows for directional signs not to exceed 4 sq. ft. These signs can be approved by the zoning inspector. ZI Ridgely stated all the signs are well needed for the park. The signs submitted this evening are over 4-sq. ft. but are going under "public service" signs. Therefore these signs needed to be approved by the Commission.

Mr. Jarrett stated the signs proposed state, "field use by permission only." Whose permission? Mr. Kessler answered the Township. If an individual goes to the Township website all the rules and regulations for the park are on it. Chair Strogin asked if the ball fields are empty on a Sunday afternoon and kids want to go play ball would they be

allowed? Mr. Kessler stated no they would not due to liability issues. If somebody wants to use the fields they have to have a certificate of liability submitted to the Township. Mr. Kessler stated he caught some guys playing ball there on Friday and he had to ask them to leave.

Ms. Szunyog asked if they could have gotten a permit? Mr. Kessler stated they would need the proper paperwork in order to do so. Chair Strogin asked if there was a charge for the permit? Mr. Kessler stated for games there is a charge, for practices there is not. It has not been determined at this time how to address the issue if residents want to use the field. That would be up to the Trustees to decide.

Mr. Erickson asked if the appropriate phone number could be put on the signs so somebody would know how to contact the Township to use the fields? Mr. Kessler stated that could probably be added on the sign. Chair Strogin asked if the signs had already been made? Mr. Kessler stated yes. He added the County made the signs but he could see if a contact number could be added. Mr. Overmyer suggested if not maybe stickers could be made to put on the signs with the contact information.

Mr. Jarrett made a motion to approve 2 public service signs not to exceed 8 sq. ft. each for Blakslee Park located at the corner of Fenn Rd. and Rt. 3. It was seconded by Mr. Erickson.

ROLL CALL-Jarrett-yes, Erickson-yes, Overmyer-yes, Szunyog -yes, Strogin-yes. The Board suggested putting a contact number on the sign for any questions or permits that may be needed regarding the park use.

The public meeting was adjourned at 7:53 p.m.

**CON'T OF PUBLIC HEARING-Proposed Text Amendment by Bill Doraty Article VI. Sign Regulations Section 605 1. Holiday Inflatables**

The continuation of the public hearing was opened at 7:54 p.m. Chair Strogin stated at last month's meeting/hearing there was no one present representing Bill Doraty. It was discovered there was an error in the hearing date and the Commission was not aware of it and questioned at the last meeting why Mr. Doraty and/or his representative were not present and apologized for the error.

Chair Strogin stated the original submission was minor. It was not a complete or valid submission. The Commission asked Mr. Doraty to provide language the Commission could work with. Mr. Larabee was then hired by Mr. Doraty and submitted the proposed text language.

Mr. Larabee addressed the Commission and stated he represented PHN Motor dba Bill Doraty KIA. Chair Strogin had Secretary Ferencz read the original application dated October 6, 2008. In sum the application proposed to revise Article VI. Section 603E.

“Allow inflatable devices like every other homeowner in the Township. We would like the opportunity to display an inflatable image at our store like every other homeowner in Medina Township without restrictions or duration.” (See file for complete application).

Secretary Ferencz then read the letter received from Mr. Laribee dated February 10, 2009, which was meant to supplement the application submitted. It was language for a new article to Article VI Signage Section 6051. Entitled Holiday Inflatable Displays. Description of the text affected: The new section has been drafted to exclusively control and govern the use of inflatable displays in the business districts of Medina Township. Arguable the current code does not clearly or directly address inflatable displays. There is a question whether inflatable displays are actually signs and whether Section 603 E. Movement and Section 605 I. (Wall Roof and Awning Signs) prohibit or limit their use. It is our intent to resolve that debate in favor of a new section which defines, regulates and limits the use of the holiday inflatable displays in business districts through a permit-based system.

Reason for request/how the proposed amendment relates to the Comprehensive Plan: It is clear that inflatable devices have become increasingly more popular in the past several years. The Medina County Planning Commission recognized this fact in their staff report to the Zoning Commission dated December 4, 2008. The proposed section would permit businesses to celebrate recognized holidays in a uniform and regulated manner. The use of holiday inflatable displays by businesses will promote and celebrate the common morals, principles and national pride of township residents. The proposed amendment is also consistent with the use of business district and with regard to their character and suitability. Moreover, it promotes economic stability of the businesses, which have chosen to locate in Medina Township.

#### Proposed Text Amendment

##### **Section 605.1. Holiday Inflatable Displays**

Inflatable displays referenced in this section pertain to all seasonal inflatable structures, balloons, figures, play equipment and sculptures not intended for human occupancy which exhibit holiday symbols, insignias or themes incidental to and customarily associated with recognized holidays. Inflatable displays shall be permitted in all business districts and in accordance with the following regulations:

- (a) The installer of the inflatable displays must be properly registered and licensed contractor and provide a certificate of insurance in the amount of Two Million Dollars (\$2,000,000.00). No bond is required. The contractor shall accept full responsibility for the imposed display loads and anchoring devices, whether ground mounted or rooftop.
- (b) Inflatable displays shall be made of flame retardant material and shall be secured and maintained in a safe, approved manner so as not to encroach upon the air rights of adjoining properties, including street right of way.

- (c) Inflatable displays shall not be installed below or within ten feet (10') horizontally of any electrical, phone, CATV, or fire alarm conductors or any other similar installations.
- (d) Each inflatable display shall be no more than thirty feet (30') tall. Each display shall be ground-mounted or securely attached to the building roof, which shall be sufficient to support the live load used in the display. No inflatable display may be located within twenty feet (20') of any road right of way or within forty feet (40') of an adjacent property.
- (e) Each applicant must pay a fee of \$10.00 to obtain an inflatable display permit.

The duration of each inflatable display permit shall not exceed thirty (30) days. The total number of permits issued by the Township shall not exceed five (5) for any one holiday regardless of business location. Permits shall be issued in the same order applications are received on a form prescribed and approved by the Zoning Commission.

- (f) Inflatable display permits may be issued for the following holidays:
  1. New Years Eve/New Years Day
  2. Valentine's Day
  3. St. Patrick's Day
  4. Easter
  5. Memorial Day
  6. Independence Day
  7. Halloween
  8. Thanksgiving
  9. Christmas/Hanukah/Kwanzaa
- (g) Lettering on any inflatable display shall be restricted to a holiday-related message consisting of not more than two (2) lines.
- (h) This section shall exclusively control and govern the use of inflatable displays; the regulations of this section shall control in the event of any conflict with other sections of this zoning resolution. Inflatable displays shall not otherwise be restricted by the signage regulations of this zoning resolution.

Mr. Larabee stated the new section has been drafted to resolve and/or end any dispute or debate, as it is arguable that the current code does not clearly or directly address inflatable displays. The Commission was interested in having some language put together to consider. Chair Strogin stated the Commission did not request language be put together for their consideration, but requires an applicant who is trying to change the zoning text to provide the Commission with proposed language.

Mr. Larabee stated the language proposed speaks for itself. It addresses inflatables and allows the Township to control and permit them by putting the burden upon the vendor to make sure an inflatable was erected safely and adequately and limit the number of businesses that can obtain such a permit. Mr. Doraty interjected that he brought before the Commission what was requested of him.

Chair Strogin read the definition of sign in the zoning resolution. "Sign" a structure, or natural object, such as a tree, rock, bush and the ground itself, or part thereof, or device attached thereto or painted or represented thereon, including any letter, word, banner, flag, balloon, other inflatable device, pennant, badge, or insignia of any governmental agency or of any charitable, or religious, educational or similar organization and/or search light, which shall be used to attract attention to any object, product, place, activity, person, institution, organization, or business. The word "sign" shall include a writing, representation, other figure of similar character located on the interior of a building only when (1) illuminated; (2) located so as to be viewed from the exterior of a building."

She stated therefore, per the signage definition, the zoning code does address an inflatable as a sign. She then read the letter from the Pros. Office dated December 10, 2008, which read as follows:

RE: Inflatables

"As I previously discussed with your Zoning Dept., the issue with inflatables whether at home, or business, is whether or not it is actually a sign as defended by your Code. Your code clearly provides that inflatable devices can be signs. However, for an inflatable device to be a sign, it is required to be used to attract attention to any object, product, place, person, institution, organization or business. Your normal holiday decorations utilizing inflatables, in my opinion would not be a sign. Inflatables in a business district likewise could under the appropriate circumstances, simply be a holiday display, consistent with that normally found in residential areas. The question is therefore, is the display to celebrate the holiday, or is it really intended to draw attention to the business activity on the property. If it is intended to draw attention to the business, it is a sign and must meet the code."

Chair Strogin opened up the hearing for public comment.

Rita Holt-Medina Twp. Trustee: She stated in speaking with and corresponding with Patrice Theken from the Dept. of Planning Services, Ms. Theken stated the recommendation of the Planning Commission Staff Report regarding inflatables was approval with modifications. She did not want the Township to be accused of selective enforcement and regarding the way Section 603 is written it applies to all zoning districts. As a result, inflatables and everything else listed in 603 E. are permitted in all zoning districts. If the Township wants help with the text they could contact Ms. Theken accordingly.

Ms. Holt added she would be speaking with Ms. Theken tomorrow morning about this issue. Her standpoint is that if somebody puts a Santa Claus on top of the roof of their house then Mr. Doraty could do so on his house or his business. That is because signs for residential and business are all-inclusive and written together and should be separated.

Chair Strogin stated that Mr. Thorne in his letter and discussion said that the key difference is that what gets put on a residential roof is usually something that is bought at Wal-Mart or Target and only 8-10 ft. tall. It is not being used to draw attention to their home to sell something. For a business the use of an inflatable and usually one much taller than the ones you can purchase at Wal-Mart, are more than likely being used to attract business. Chair Strogin added that Mr. Doraty has stated at two different meetings that his inflatable is being used to attract customers and business. Therefore there is a very distinct difference.

Debralyn Schmidt (Medina Chamber of Commerce): She stated that even if the sign or display for residential business is an issue, then maybe it was time to reconsider the current code and look at the needs of the business community.

Chair Strogin stated she appreciated that businesses are having a difficult time and it was a shame that they are as there are a lot of good businesses that are suffering but unfortunately the cause of their suffering is due to the economy and not Medina Township zoning. Hopefully it will recover soon.

Michelle Kirda (Windfall Rd.): Is the Commission going to consider the proposed language or just vote yes or no? Chair Strogin stated the Commission is not voting at this time, we are hearing from the applicant and his representative as well as input from the public. The Commission could then decide on the proposed language and then it would have to be sent to the CPC for their review. What the CPC reviewed previously was incomplete and their recommendation of modification was basically that it needed to be done over as there was nothing to review with the original application.

Mr. Larabee continued that the CPC stated they approve with modifications. He added he believed the CPC were in favor of the concept of inflatables, and for Chair Strogin to say the application had to be done over was not a fair statement. He added that the Township's own legal counsel in his letter has stated there is a gray area if inflatables are signs and we are trying to clear up that debate and provide the Township with tools to regulate them and allow businesses in the commercial areas to display inflatables for holidays. The Township would be able to limit them in time, scope and holiday.

Matthew Gallo (Hamilton Rd.) If everyone was allowed to put up these inflatables, who would be responsible if somebody got into an accident rubbernecking? The business that puts it up or the Township that allowed them? If I am going to buy something I don't need an inflatable to find the business. Mr. Gallo stated he has lived in the Township for 30 yrs. and has seen businesses want a lot of signs. He concluded that we live in a sue-happy society.

Leo Snell (Inflatable Images). The rubbernecker who does not take responsibility for driving his car in a safe manner and paying attention has nothing to do with an inflatable

display. Second, for the record you can not be prejudice regarding inflatables i.e. you allow them for residents so you should allow them for businesses. This has been upheld in Federal court which he could supply details of. If you cannot regulate residents then you cannot regulate businesses.

Matthew Gallo: Regarding inflatables at Christmas time we are celebrating a baby's birthday who proved to be the greatest man who ever traveled the earth.

Bill Ostmann (Hamilton Rd.):Mr. Laribee has stated he has provided the Commission with the means to regulate inflatables and the gentleman from Inflatable Images has said they cannot be regulated.

Leo Snell (Inflatable Images) I did not say they could not be regulated. I said if the Township is not going to regulate residents then they could not regulate businesses. You have to be equal and fair. You cannot prohibit businesses from having inflatables but allow residents to put them up.

Mr. Laribee stated right now there would be a citation or a violation issued against a business for putting an inflatable up. While in a residential area you are not seeing that happen. Chair Strogin stated our sign code in the residential area as Mr. Thorne has stated is that the inflatables not being used to attract business but being used to celebrate the actual holiday with the inflatable. Christmas seems to be the main holiday where these inflatables are put up and sometimes for Halloween. They are used to celebrate the holiday not attract individuals to a business. As to the question as to who would be liable if someone got into an accident rubbernecking she really did not know who would be responsible. However there is something called an attractive nuisance. Chair Strogin stated an example of that is she had a lake on her property and if some kid comes on her property and drowns in her lake who's responsible? This would be for the courts to decide. This was not something the Township would regulate.

Michelle Kirda: With regards to the residential there are a lot of people in the Township that work out of their homes and run businesses out of their homes so who's to say they could not put up an inflatable display to get people to drive by their home to attract customers? It seems like there will always be an argument so she felt it was walking on thin water to try to regulate them.

Chair Strogin stated per the zoning code home occupations were not permitted to have signs advertising their business. ZI Ridgely interjected an individual who has a home occupation even has to sign a document which states there will be no signage permitted for their home occupation.

Michelle Kirda: I feel this is a fine line. People are marketing very aggressively these days because they have to and felt the issue of inflatables would come up again and again.

Ralph Holt: I headed towards Brunswick today and at Rt. 303 and 71 a car dealership had a Blue Devil inflatable.

Leo Snell: That inflatable was purchased by the Hyundai dealership to celebrate the Brunswick Blue devils sports teams. The dealership gave the money to the school district. The Blue devil was the school mascot.

Rita Holt: It was discussed with Mr. Thorne how many inflatables could be erected and for how long, etc. He stated the Township would be able to limit how many permits were issued a year per holiday and a time limit. It was not like if an inflatable went up it would be up for 2 yrs. The permits could be issued on a first come first serve basis. I believe when you look at signage...it has been 25 yrs. since a lot of the signage has been changed and we do have a lot of illegal signage in the Township as it is so we have to come up to the 21<sup>st</sup> century. I personally would like no signs in the Township but in reality especially if I am from out of town I like to see signage so that I know where I am going. I think we should go over our entire sign regulations to be fair to everyone in the Township.

Ms. Holt continued that the Commission had a situation with NOVA Animal Hospital last month with an electronic sign and put conditions upon it. That was fine but the Zoning Inspector told the Commission that Medina Township has no conditional zoning. You cannot tell someone when they can turn the sign on and when they could turn the sign off or when the message could be changed. Mr. Thorne pointed that out to her last night at the seminar.

Mr. Jarrett stated the Commission did not tell the applicant when they could turn the sign on and off but only within a 24 hr. period. That is not a specific time. Ms. Holt stated that the Commission could not say that. Mr. Overmyer stated he would like to hear that from Mr. Thorne and discuss it with him because we do have language prohibiting blinking lights. Therefore the 24-hr. period puts it outside of that realm.

Chair Strogin stated it was the applicant that brought it up that she was willing to change the message on the sign possibly only once a week and it could be programmed right into the computer as to when the sign would change (she stated at 3:00 a.m.) so there would not be any concerns about somebody seeing the sign flip while they were driving by as the applicant was very safety oriented. Chair Strogin continued that she has requested a formal opinion by Mr. Thorne and at that time it could be discussed.

Ms. Holt stated that is why the Township needs to look at all the sign regulations and come into the 21<sup>st</sup> century. We cannot have these situations come up time and time again and not have some resolution to this situation whether yes or no.

Chair Strogin stated in regards to Ms. Holt's comment that the signage language has not been changed in 25 yrs.; in the footnotes of each page of the Zoning Resolution it states



the amendment dates of changes made to the code. Signage had numerous re-writes with the most being done in 2000.

Ms. Holt stated those were small changes and not significant changes that were made to the signage language. Ms. Holt continued at the last Zoning Commission meeting Chair Strogin made comments that Trustee Todd and Dean Holman were at a seminar and had a clandestine meeting and that was not accurate. Trustee Todd explained to Chair Strogin what that meeting was about. Chair Strogin stated she did not think that was prudent discussion for this hearing. Ms. Holt stated the minutes were incorrect and Trustee Todd corrected you (Chair Strogin) at the last Trustee meeting. Mr. Overmyer stated the minutes reflected what was said so that was immaterial.

Mr. Overmyer stated Mr. Laribee proposed inflatables to be set to specific number of holidays. He added that was playing with first amendment issues. What was there to prevent someone from challenging those set holidays i.e. they want to celebrate Veterans Day? Mr. Laribee stated it would come down to a business applying for a permit created and approved by the Township for an inflatable for that specific time frame. The nine holidays he suggested could be changed to one inflatable per month and not address "holiday" at all. The Township could then review the application and make a determination on a case by case basis. Mr. Overmyer stated that if we permit inflatables the Township could not restrict it to one religion or one celebration. Mr. Laribee stated the language he provided was for the Commission's review comment and/or modification.

Mr. Overmyer stated the proposed text states that "no inflatable display may be located...within 40 ft. of an adjacent property owner..." Does that discriminate the smaller property owner regarding the setback requirements? Mr. Laribee stated he did not know the text was taken from other communities and the setbacks based on the Township's zoning resolution.

Sally Gardner (Foskett): The proposed language limits the number of inflatables to 5 and on a first come first serve basis. If I was business number 6, I would be annoyed by that limitation. Mr. Laribee stated if the Township had a form and system set up the first come first serve basis was probably the easiest way to govern it unless you want to do it on a rotating basis. The proposed language would limit the number of inflatables to 5 per holiday for the entire business district.

Leo Snell (Inflatable Images): You could also put a provision in the code that states that inflatables could not be within 500 ft. of each other. Other cities have done that.

Mr. Overmyer stated when Mr. Chris Kalina was Chair of the Zoning Commission; substantial changes were made to the signage code to bring it into compliance more with the City of Medina. The current signage permitted is one square foot of signage per each

foot of linear frontage of the business. What would you say if someone said these inflatables exceeds that square footage? Mr. Laribee stated an inflatable is not a sign by virtue of the statute. We have proposed a new section of the code called inflatable displays.

Sally Gardner (Foskett Rd.) I heard Mr. Laribee talking about regulating how many times a business in a commercial area could put up an inflatable. The conversation at the beginning of the meeting was that you could not regulate something in the business area that you could not regulate in a residential area so does that mean now there would need to be regulations for a resident to put up an inflatable? Are they also going to be on a first come first served basis?

Mr. Laribee stated he did not believe that would be necessary as a commercial district dictates by its nature to have different standards as a business district is set up for that. The residential district is not set up to have the large inflatable displays.

Ms. Holt interjected that was why she stated before that the Township has to separate its sign code for residential and commercial. They can be separated and they should be. There is a difference between residential and commercial.

Mr. Doraty: When I first brought this issue up there was no flexibility. Then you required me to come up with language to address this. So as not to waste time and money... its time to come up with a reasonable solution. I have not received any negative comments since I put up the inflatables in fact I have had many positive statements. There is an assisted living facility to the west and individuals come into his business and tell him how much it makes their day. There are people who drive by and come into the dealership with their kids and say how much they like the displays. Nobody could take more pride in their community, school district or their neighborhood than myself. I would never do anything that was tasteless for this community. I believe the zoning regulations are wrong. Thirty years ago there were many things that were done differently. To say I hope the economy turns around and gets better for the business community just doesn't work today. You have to allow businesses to do things that will help us. You can't just hope. I need you to be reasonable. I can tell the questions are getting chippy and that is not what I am here for. I hope you look at this with an open mind.

Mr. Overmyer stated he had no greater respect for a local businessman than he did for Mr. Doraty. The discussion that has spawned with the proposed text submitted reflects the substantive change this proposed language would make to our sign language. This is a substantial change in the sign regulations and it is a subjective change. That is the reason for the range of opinion on this issue. Mr. Overmyer added he felt there were some first amendment issues that needed to be addressed with the proposed language. These were not small issues and they should be examined very thoroughly. Something like this could change the character of the community.

Ms. Holt: We have tried to coordinate some of our signage language with the City of Medina. The City does permit electronic signs. She added she had language from Mr. Thorne on various city sign regulations and the Township should look at them to give us a base.

Michelle Kirda: My 4-yr. old loves the inflatables as well as my mother in law from Westfield Center.

Mr. Larabee stated Mr. Overmyer made some valid points in his comments and regarding the list of holidays, the language could be holiday neutral and only allow one inflatable permit per month etc. Regarding constitutional issues, Mr. Larabee stated he believed the Township is treading on constitutional issues by citing businesses putting up inflatables by their religious or holiday beliefs. Right now the zoning code is not pinpoint accurate as to any prohibition on that so you may have a problem if you don't regulate this.

Mr. Overmyer stated he knew the Federal Government recognizes approximately 375 different religions. Mr. Larabee stated Mr. Doraty has been cited to remove his inflatables and that could be a problem. Mr. Overmyer stated it is the Commission's responsibility to write regulations so that they would not be challenged as those can be expensive to the community.

James Apana (Dogleg Trail) When the Commission decides this issue they should do it for the district and not the personality. Mr. Doraty may be a wonderful businessman but there are some that are not and this regulation would control them all.

Chair Strogin stated that's what this board and Township has to do. The BZA can zero in on one property owner but this Commission has to decide what is best for the entire community. No one is against Mr. Doraty personally the inflatables are the issue.

Mr. Doraty: We have been at this for a few months and I have yet to see the parking lot fill up with objectors and shouldn't we have seen this by now if was the case.? Wouldn't this be the case as this is a public hearing?

Ms. Holt stated that it was true we would have to look at this for every business be it Wal-Mart or Home Depot. Mr. Doraty stated his point was that if people did not like it...How many people have called and said they loved the inflatables? Chair Strogin stated there have been complaint calls received by the Township. The ones that call are usually calling to complain about something and ask how did we let such and such in the Township.

Leo Snell (Inflatable Images): I have never seen somebody as diligent and professional as Mr. Doraty go through the hoops to work to be able to put up a display just like anybody else for their business. Cities are changing and I can bring those numbers. They are

allowing inflatables all over the country and not with near the protection proposed by Mr. Laribee. I think the wording he put together is one of the best protections I have seen. I just put up an inflatable in Israel one of the most conservative countries in the world. It was 45 ft. Yoplait yogurt cup in the middle of downtown Israel.

Chair Strogin stated the timing of this procedure was only delayed by the Township last month because of an error in the hearing date. The main reason for the delay was because the Township did not receive language to consider.

James Apana (Dogleg Trail): Again it seems we are focusing on the individual. What happens when the Township has 15 of these inflatables floating around the Township? ZI Ridgely stated if the code is changed, she would have to give out the new regs to every business owner because as soon as they see Mr. Doraty's inflatable then the next business will put one up and not come in for a permit. I am going to be chasing inflatables.

Having no further comments, the public hearing was closed to public comment.

Chair Strogin stated there was an additional letter faxed over to the Township the night of the last Commission meeting from the Pros. Office regarding the supplement provided by Mr. Laribee. Chair Strogin read the letter:

**RE: Supplement to Application for Proposed Text Amendment Bill  
Doraty KIA, 2929 Medina Road**

Dear Zoning Commission. Members:

As you may recall, on February 10, 2009, Michael Laribee, counsel for Bill Doraty KIA provided the Zoning Commission with the attached proposed language for a new section under Article VI of the Zoning Resolution: Section 605.1 Holiday Inflatable Displays. Mr. Laribee emailed a courtesy copy of the proposed language to this office.

Please be advised that this office has reviewed the attached proposed language for Holiday Inflatable Displays. In general, this office believes that there are a number of regulations in the proposed amendment which are impermissibly content-based. Specifically, these regulations are based on the "content" of the message or communication. With a few, narrowly-defined exceptions, content-based restrictions violate the free speech protections guaranteed by the U.S. and Ohio Constitutions. Our comments are as follows:

1. Section 605.1 HOLIDAY INFLATABLE DISPLAYS: The term "Holiday" in the title, "Holiday Inflatable Displays," is an impermissible content-based restriction. This office recommends changing the title to "Inflatable Displays."

In addition, the paragraph immediately following the title, contains several content-based restrictions which should be removed. These include the term "seasonal" and the phrase "which exhibit holiday symbols, insignias or themes incidental to and customarily associated with recognized holidays."

Further, this paragraph limits placement of inflatable displays to "all business districts." This office believes that restricting such inflatable displays from residential districts is legally questionable.

2. **Section 605.1(a):** This provision should be removed unless inflatable displays are to be made a Conditional Use.
3. **Section 605.1(e):** Here, the proposed text amendment indicates a fee of \$10.00 to obtain an inflatable display permit. However, it is up to the Trustees to determine what fee is appropriate to obtain such a permit.

Further, the regulation limits the number of permits for "any one holiday. . ." As noted above, the term, "holiday," is 2 content-based restriction, and should be removed from the language.

In addition, this office foresees potential challenges to the regulation in that it limits the number of permits issued by the Township to five on a first come first served basis.

4. **Section 605.1(f):** This section specifically numerates the holidays for which inflatable display permits may be granted. These are all content-based restrictions – the entire clause should be removed from the regulation.
5. **Section 605.1(g):** Here again, the term "holiday-related message" should be removed from the regulation,
6. **Section 605.1(f):** This section stipulates that in the event of conflict with any other section of the zoning resolution, the Inflatable Displays section shall control. I recommend removing the entire clause from the regulation.

As evident in our review of the attached proposed text amendment, this office believes that many of the clauses within the regulation are impermissibly content-based. Once you have an opportunity to review these suggestions, this office is available to meet with you to discuss these changes or to assist you in drafting legal regulations which will accomplish your directives."

Chair Strogin stated since the applicant was not present at the last meeting she asked

the Commission members to take home the fax and read it as well as the proposed language by Mr. Doraty and be prepared to offer any comments/suggestions at the next meeting. She added at this point she was not asking if the members were for or against the proposed language just comments on the facts submitted. Chair Strogan stated she took Mr. Larabee's proposal and highlighted the items the Pros. Office stated should be removed which ended up being a considerable portion of Mr. Larabee's proposal.

Mr. Jarrett asked Mr. Larabee about the staff report from the Dept. of Planning Services dated December 4, 2008 and added he did not have that document. Mr. Larabee stated it was part of the file. Chair Strogan stated Mr. Jarrett was at that meeting and the document from the CPC was based on the very brief and incomplete application that was submitted. That application should never have been submitted in that condition but it was and they acted on it. They approved the application as modified, but asked the Commission to look at it again. Mr. Larabee interjected they approved it with modifications.

Mr. Larabee stated he was not privy to the letter from the Pros. Office nor did he have a chance to review it. The Commission has had the document for a month and we did not have the opportunity to review it. Mr. Larabee stated he took issue with the fact that the Commission let everyone have the opportunity to comment before this letter was brought to our attention. Chair Strogan stated she waited to read the letter from the Pros. Office so as not to prejudice the comments from the public. Mr. Larabee stated he felt the public needs to hear all sides including the Pros. Office though they are not here to answer questions themselves. Mr. Larabee stated he took issue with that.

Mr. Larabee stated he was fine with taking out the word "holiday" as well as the list of holidays he proposed. He could amend the proposal and then it could be sent to the Planning Commission and added he was sure they would approve it as they have approved it once before.

Ms. Holt stated Bill Thorne was the one who suggested the wording holiday inflatables but different lawyers have different opinions (the letter from the Pros. Office was prepared by David Folk) and added she felt this letter should have also been given to the Trustees.

Mr. Jarrett asked about the reference to the staff report by Mr. Larabee from December 4<sup>th</sup> as he had one dated December 15<sup>th</sup>. Chair Strogan stated the 4<sup>th</sup> of December was the date of the CPC meeting and December 15<sup>th</sup> was probably the date of the letter the CPC wrote but she did not have that paperwork in front of her. Mr. Larabee stated it should be part of the Township file. It was determined there is only one staff report and that would be the document Mr. Jarrett had.

Mr. Jarrett asked Mr. Laribee about the last paragraph of his supplemental letter that inflatables promote economic stability for businesses. He asked Mr. Laribee to explain. Mr. Laribee responded the Township would be giving businesses an opportunity to display and promote their beliefs and not restrict them and saying you can't put up anything at all as the Township is doing right now. Mr. Jarrett stated therefore an inflatable is stability and not having an inflatable is non-stability? Is that what you are saying? Mr. Laribee stated no that was not what he was saying. He added that it seemed like Mr. Jarrett was trying to get him to say something but he doesn't know what that would be. Mr. Jarrett stated he was just looking for clarification.

Mr. Jarrett continued, regarding the proposed language Section 605 1.A. it says "No bond is required." Why? Mr. Laribee stated that language was mirrored from another community. It is just a suggestion. Mr. Jarrett stated the Township could not regulate the content or shape or design of an inflatable. Mr. Laribee stated he believed the Township could but there was not a Prosecutor here to talk and debate about this with. Mr. Jarrett stated what he was leading up to was Sexually Oriented Businesses and let your mind venture there regarding inflatables. Chair Strogin stated the Township could not count on good taste. Mr. Overmyer stated regarding first come first served in terms of eligibility of signage, maybe a lottery would be the better way to handle this; otherwise there could be business owners fighting for first place in line. He added he would like to have a sit down with Bill Thorne or a representative of the Pros. Office and would invite Mr. Laribee to be present as well to discuss all of these issues. Mr. Jarrett stated that limiting the inflatables to 5 businesses or for only 30 days...would be a potential challenge as well.

Ms. Szunyog stated she felt because of all the things the Pros. Office has suggested to be removed from Mr. Laribee's proposal, it would probably be better to start from the beginning and write a code on inflatables which should be part of a review of the entire signage regulations. Chair Strogin stated if we do that it would be 6 months to a year before any regulations would be written. Ms. Szunyog asked if Mr. Doraty had any proof that since he put up his inflatable that more people have bought cars from him? Mr. Doraty stated yes the inflatables have increased car sales. KIA's market penetration nationally is 2.1 and overall KIA is 5.8 and that can be backed up with documentation. Mr. Doraty stated he believed advertising is a concerted effort and added everything they do makes a difference.

Ms. Szunyog stated she appreciated the problems all the businesses were having during these economic times. She added that when she drove down that part of Rt. 18 it strikes her as kind of messy, not enticing or organized. Maybe there is something besides signs that the Township could do to help the business district in other ways.

Mr. Leo Snell (Inflatable Images): There are cities all over country that do not have regulations as comprehensive as the ones proposed by Mr. Laribee. You can nitpick this to death and cause Mr. Doraty undue financial woes as he has his attorney here and what

would prevent us from bringing in our attorney to help fight this. He is giving you sound advice and a sound way to go. Are you ever going to have it perfect? No, but the use of inflatables is a proven step to increase business.

Chair Strogin stated she felt the aggressive advertising Mr. Doraty has used such as the deals he has had like buy one get one free plus the fact that the car he was offering was in the lower price range...Mr. Doraty interjected the car he was driving was almost \$40,000. He added this is...Chair Strogin stated the average car Mr. Doraty advertises cost \$8-\$10,000. Mr. Doraty stated, "You're wrong!" Chair Strogin stated Mr. Doraty's dealership has an attractive offering that was all she was saying. Your advertisement and deals are what would bring a person into the dealership to purchase a car. She added she would not buy a car just because there is a balloon on the roof. Chair Strogin stated when she bought a car it is because the car is a quality vehicle and she can get it at the price she wants to pay.

Bill Ostmann (3670 Hamilton Rd.) I own a business at 3830 Hamilton Rd. which is in the middle of a residential district. If you were to write regulations for the businesses in the business district to have inflatables, I hope you would not exclude my business even though it is in the middle of a residential district.

Mr. Overmyer stated we have to consider the entire community. I don't see how we can limit holiday expression. He added that Mr. Larabee stated you could have problems if you don't enact regulations. It is a first amendment issue and it cuts both ways. Chair Strogin stated it was a first amendment issue if the Township tries to regulate what is on the sign. Our sign regulations say what is and is not a sign and what size signs are permitted to be. An inflatable is a sign under our regulations and the largest sign one can have is 80-sq. ft. unless you go to the BZA. Chair Strogin added that if Mr. Doraty wanted to take down one of his signs and put up an 80-sq. ft. balloon that would be permissible. You cannot have both you can only have one the way the code is written now. Mr. Larabee interjected, right now the Township has unequal and improper prohibition against businesses that you don't have against residential.

Mr. Overmyer stated one could also ask if an inflatable is to attract business or celebrate a holiday. He commented that he could say that what is put up on a residential property be it a bunny or a snowman is to celebrate the holiday. Mr. Overmyer added he could not say with much certainty about the intent if the same structure was put on a business. Mr. Overmyer stated he would like to see a work session meeting with Mr. Thorne to address these issues with board and Mr. Larabee would be invited to attend as well. The rest of the Commission members agreed.

Chair Strogin stated a meeting would have to be coordinated with Mr. Thorne. May 5, 2009 was tentatively scheduled for a work session and would be addressed with the Pros.



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Office to see if they would be available to attend or if they had an alternate date they could be in attendance.

Ms. Holt asked that a copy of the letter from the Pros. Office regarding their response to Mr. Laribee's proposal be given to the Trustees and Mr. Laribee.

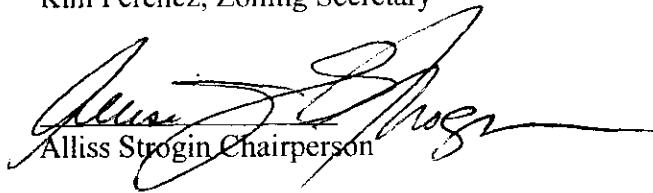
Mr. Overmyer made a motion to table the public hearing for Mr. Doraty's proposed text amendment on inflatables until the Commission's next scheduled meeting May 19, 2009 at 7:30 p.m. It was seconded by Mr. Jarrett.

ROLL-Overmyer-yes, Jarrett-yes, Erickson-yes, Szunyog -yes, Strogin-yes.

Having no further business before the Board, the meeting was officially adjourned at 9:25 p.m.

Respectfully Submitted,

Kim Ferencz, Zoning Secretary

  
Alliss Strogin Chairperson

