

BE IT REMEMBERED that the Hattiesburg City Council held a public hearing at 4:00 p.m. Tuesday, January 3, 2017, in Council Chambers at City Hall, for the appeal filed by Leonard Busby, Capturion Network, LLC, to appeal the Urban Development Director's denial of a request to convert a static billboard to a tri-vision billboard located at 5012 US Highway 98; Pattie Brantley, Urban Development Director, denied the application on October 10, 2016 based on LDC 95.12.2.; Public hearing was set previously for 4 p.m. December 5, 2016.

Those present included Mayor Johnny L. DuPree and members of the City Council Kim Bradley, Ward 1; Deborah Delgado, Ward 2; Carter Carroll, Ward 3; Mary Dryden, Ward 4; and Henry Naylor, Ward 5. Others in attendance included Director of Administration/City Clerk, Kermas Eaton; Chief Financial Officer, Sharon Waits; City Engineer, Lamar Rutland; Fire Chief, Paul Presley; Assistant Fire Chief, Freddy Wilson; Police Chief, Anthony Parker; Assistant Police Chief, Frank Misenhelter; Director of Public Works, Larry Barnes; Director of Federal and State Programs, La'Keylah White; Director of the Water Department, Chadwick Frierson; Director of Parks and Recreation, Clemon Terrell; Director of Urban Development, Pattie Brantley; Planning Administrator, Ginger Maddox; Land Code Administrator, Steve Mitchell; Code Enforcement Manager, Mark Jordan; City Attorney, Annie Amos; Assistant to the Mayor, Valerie Arnold; Public Relations Coordinator, Chinika Hood; Clerk of Council, Debbie Bernardo; Deputy Clerk of Council, Lisa Luu; media; and the public.

Council President Carroll called the public hearing to order and explained the procedures.

1. **2016-134** Hold public hearing for appeal filed by Leonard Busby, Capturion Network, LLC, to appeal the Urban Development Director's denial of a request to convert a static billboard to a tri-vision billboard located at 5012 US Highway 98; Pattie Brantley, Urban Development Director, denied the application on October 10, 2016 based on LDC 95.12 2.; Public hearing was set previously for 4 p.m. December 5, 2016.

Attachments: Appeal Letter - Capturion Network October 17 2016
 5012 US Hwy 98 - Sign Application - Billboard
 Planning Department Documents, 1-3-17

Council President Carroll called for the presentation from the appellant.

Craig Orr, attorney for Mr. Busby, appeared before the Council. Mr. Orr stated that the request is not for a variance, but to convert an existing static billboard to a tri-vision billboard that allows multiple advertisements on the same face. Mr. Orr said there are at least six such billboards in Hattiesburg today and noted that he had seen two on Highway 49, at Walgreen's and at the Shrimp Basket .

Mr. Orr stated that Ms. Brantley's denial was based solely on the Land Development Code, Section 95.12; he said she focused on the word "revolving." He said Ms. Brantley, in denying the application, treated differently than the city has treated competitors, who he said have been allowed these six billboards. He stated that Mr. Busby was not allowed to go to the Planning Commission. Mr. Orr that if the Council allows to stand, his client

will have been treated differently than the other six billboard.

Council member Bradley asked if Ms. Brantley's reason for denial was stated in the appeal; Mr. Orr said that he attached her letter.

Mr. Orr said that he wanted to make three points:

1. He said if the Council Ms. Brantley, his client will have been treated differently than his competitors.
2. He said Ms. Brantley's letter focuses on the word revolving and that she underlined "revolving mechanism." He said the word "revolving" is not defined in the Land Code, and that the Land Code instructs that Webster's Dictionary is to be used for words that are not defined. Mr. Orr said he was not here when the city was enacting this particular provision, but would think the prohibition of a revolving sign would concern about drivers being distracted. He said the sign at the Shrimp Basket is not a revolving sign, as the sign itself does not revolve. He said that yes, the face of the sign changes about every 10 seconds, but is not such that it would distract drivers. Mr. Orr submitted that the reason for the prohibition was not to ban tri-vision signs. He said the next prohibition is animated signs, or signs that revolve or are animated or moving, which would potentially distract or startle drivers or cause to take their eyes from the road. He said he understands that prohibition and considers it valid. He submitted that the statute Ms. Brantley cited as the sole basis for the denial is not applicable to this particular type of sign.
3. Mr. Orr said that this issue was involved in litigation regarding the Shrimp Basket sign. He said the city signed an agreed order in 2009 that it has no objection to replacement of the sign requested by the plaintiff's permit application and that the plaintiff has complied with all applicable code provisions of the city. Mr. Orr said that is significant, and that it goes somewhat to an estoppel argument and opening remarks and also goes back to his number one point, which he said is his main point, that is being treated differently. He repeated that his client is being treated differently, and said these signs are all over the City of Hattiesburg now.

Mr. Orr requested that the City Council reverse Ms. Brantley's determination that is not entitled to proceed forward on this sign.

Council President Carroll called for the presentation from the City.

Pattie Brantley, director of Urban Development, distributed two documents to the Council.

2017-260 Planning Department Documents, 1-3-17
 Attachments: Timeline, 1-3-17
 Existing Tri-Vision Billboards, 1-3-17

She said the complainant sent a letter, not included in the packet, asking Mr. Lawrence to talk about four billboards; she said there are six billboards. Ms. Brantley stated that Mr. Busby claims he has been treated differently than other tri-vision sign owners. She said research with MDOT shows that permits for the four boards in question were not issued by the city.

Ms. Brantley said the timeline she distributed provides MDOT's standard operating procedures; she said that in 1977, one clause in their proceedings, very vague, said that any other law that is more restrictive than theirs

would apply. In 2008, she said, MDOT kept that same language and added the language of municipality or county, and required at that time a city or county official's signature, which she said had not been required before that. Ms. Brantley stated that the last time MDOT standard operating procedures were changed was in 2013, when added a lot more. She said the applicant shall attach a certified copy of any permits required by the municipality or county in which the proposed sign is to be located. Also, she said, added a section on tri-vision; Ms. Brantley stated that tri-vision signs first appeared in 2008 as a check mark, but without full detail and definition.

She referred to the billboards between 1977 and 2008 and said the City did not permit any tri-vision billboards. She said the court case to which Mr. Orr referred involved a billboard that happened to be a tri-vision sign, but that the problem was that the property owner wanted to move that sign and get another sign company; Ms. Brantley said that the was that the Code requires that when a sign is taken down, another cannot be put up without meeting the Code. She said the agreed order finalized that one sign owner could take it down and the other of the same size could go up. She repeated that the case involved tri-vision signs, but tri-vision was not the point of the court case.

Council member Bradley asked what year that case occurred; Council President Carroll responded that it occurred in 2009.

Ms. Brantley said that all along, even on his application, Mr. Busby has stated that it his right to have tri-vision because has permitted the others; she stated that the city has not permitted.

Council member Delgado asked Ms. Brantley what problem the city has with tri-vision signs, if the state is permitting them in the inner business corridor; Ms. Brantley responded that tri-vision is not in the Code and is not a regulation. Council member Delgado said that if it is not in the Code, should be able to. Ms. Brantley disagreed, and said MDOT now requires applicants to attach a signed permit from the city with their application and will not allow the sign to go up without it. Subsequent discussion related to Council member Delgado's question as to whether there is specific language prohibiting the tri-vision billboards.

Council Vice President Dryden asked Ms. Brantley, for clarification, if she is saying the Code does not allow for tri-vision signs; Ms. Brantley replied in the affirmative.

Council member Delgado asked if she is missing language. Ms. Brantley stated that the two pieces of paper she distributed show a timeline and the four signs the City was asked to research. Council member Delgado said she is talking about the language that specifically prohibits these types of billboards; Council member Bradley said that he thinks there is another letter that. Ms. Brantley stated that the Code does not state in writing that tri-vision are not allowed, but said that the interpretation by sign administrators long before she came to the city has been.

Council member Bradley asked how the term "rotating signs" can be interpreted; he asked if it is the sign, or the components of the sign, moving. Ms. Brantley said it is the message area. Council member Bradley said that the Code does not say that, and said that is point.

Council member Delgado said that if the Code prohibits, she would like to see that language; Ms.

Brantley replied that the letter is attached in the packet.

Council member Bradley commented that it has not been long since television screens were not allowed to be billboards; Ms. Brantley agreed and said an ordinance had to be passed. Council member Bradley said the city went through that process and it seems that every time there's a public hearing, it has to do with signs; Council member Delgado said because sign administration is not handled very well.

Council President Carroll said Ms. Brantley seem to be saying there are two types of billboards, regular billboards and the ones that change, the television screen-type. He said it is hard to issue a permit for something that does not exist in the City of Hattiesburg. Ms. Brantley agreed, and said the same decision is made for anyone who asks to put up.

Council President Carroll said that if he recalls the 2009 case correctly, lease had run out with the old sign company and he wanted to go with a new sign company, but was told by that if he took the old sign down he would not be able to put a new one up. Council President Carroll said that said that essentially was tying his hands, that he could keep his old sign but had to continue with the old sign company. Council President Carroll stated that the court decided that had the right to continue with a sign but did not have to continue with the old sign company; he and Ms. Brantley commented that it was a tri-vision sign, but that was not the point.

Mayor DuPree commented that as technology evolves for signs, unless specifically addresses that sign or technology, there will always be this type of problem.

Council member Delgado expressed disagreement with a policy that these types of signs because they distract drivers, and said signs, even static signs, are there so that drivers will see them. She cited one of signs as an example; she said she appreciates that flashing signs can be a distraction, but said is placing an undue burden on businesses that are trying to advertise their goods and services.

Mayor DuPree said that the Council has not wanted a proliferation of signs in Hattiesburg; he said the has tried to manage but said changing technology, first with television screens and now with tri-vision, has made it difficult to know .

Council member Delgado referred to the Council's passage of the sign ordinance. She stated that tri-vision is a few steps below LED signs, and the mayor agreed. She asked why tri-vision was not considered for the sign ordinance, and the mayor said that it was never an issue, that MDOT permitted them.

Ms. Brantley distributed an opinion from City Attorney Annie Amos, an email to Mr. Orr; she said that Ms. Amos was detained in Perry County and would arrive as soon as possible.

2017-261 An opinion from City Attorney Annie Amos, 1-3-17.

Attachments: Email to Attorney Craig Orr, 8-17-16

Council member Bradley said he understands that if the Council votes to allow, he would then apply to MDOT for the permit; the Mayor said he would have to have an official signature; Council member Bradley concurred and said that the Council has a little say in this matter.

Council President Carroll stated that Mr. Orr has said that his client has not been treated as other owners have been treated, and asked Mr. Orr is he is asking the Council to override and approve the sign or if he is asking

that the Council send the matter to the Planning Commission as the proper track. Mr. Orr said that he is following letter, which said that he had 10 days to appeal her decision; he said it is his understanding that he is here for a decision.

Ms. Brantley stated that decisions are made every day in the Building, Code Enforcement, and Planning; she said are regulators, and that this is not a decision for the Planning Commission. She said this is the first time she has ever known of a denial or appeal of a staff decision.

Council President Carroll called on Mr. Orr for rebuttal.

Mr. Orr repeated that he is following Ms. Brantley's letter and stated that he is perfectly fine with an appeal before the City Council and does not want anyone to think that he feels he was deprived of his opportunity to appear before the Planning Commission.

He said Ms. Brantley talked about four signs, but that he mentioned six, and that the city has six of these up.

Mr. Orr said he wanted to correct a comment Ms. Brantley made, that application stated that the city was denying his client's application and allowing competitors. He stated, " 'The city has allowed our competitors to erect tri-vision signs' - - because we didn't know all this MDOT stuff at the time - we had to make the application and go through the process at that time - 'and/or has not demanded that our competitors take down existing tri-vision signs. We would ask that we not be treated differently by the city.' "Mr. Orr said that is being treated differently. He repeated, and said can call it whatever it wants, but if the application is denied, will have been treated differently. He said will be able to derive income from their tri-vision signs, and will not. Mr. Orr said that did say that the city has allowed them to maintain. He said that Ms. Brantley, in their first meeting, acknowledged that the city probably should do something about. He said just wants to be afforded the same opportunities as his competitors.

Mr. Orr said that Ms. Brantley spoke about standard operating procedures, but that her denial was based on 95.12. He said he brought in so the Council would know what they looked like and where they are located. He said that he brought a copy of the chancery court case file and that tri-vision is all over it; he reminded Council President Carroll that he had said the court decided. Mr. Orr said that this is an agreed order signed by City Attorney Charles Lawrence and Mr. Filch of Erik Lowrey's office, and that the city acknowledges that it has no objection to the placement of the sign as requested by plaintiff's permit application and that the plaintiff has complied with all applicable Code provisions of the City of Hattiesburg; he said he finds this significant.

Mr. Orr said that tri-visions are not mentioned in the Code. He said this is not a screen, and asked the Council to go and look at the sign at Shrimp Basket. He repeated that tri-vision is not mentioned in the Code, and said revolving is; he said that is ambiguous. Mr. Orr stated that says signs shall not revolve; he said the sign at Shrimp Basket does not revolve. He said that at the very best, that provision of the Code is ambiguous and that if it is ambiguous, according to the dictates of how codes and administrative acts are interpreted, the ambiguity should be resolved in his client's favor. He stated that respectfully requests to be allowed to convert this existing static billboard to a tri-vision face.

Council President Carroll asked if the sign will stay the same size; Mr. Orr said that is his understanding but he will check and let Council President Carroll know.

Council member Bradley asked Ms. Brantley if there is really a difference whether a sign has one message, two messages or three messages? Ms. Brantley said that five different people around a table would and that the interpretation of the Code administrator should carry throughout; she said it is not perfect, but that is the Code and how it is interpreted.

Council member Bradley asked her and that the whole sign is not rotating, then asked if it makes any difference to the surroundings or to people passing by whether there is one face or three different pictures per minute. Ms. Brantley said there are ten billboards from 59 to downtown, so that would mean 30 faces of different advertising; she said that would be hard. Council member Bradley said it is one place in space and asked what difference it makes what face is on it; Council Vice President Dryden replied that it is moving; Council member Bradley said that everything moves. Ms. Brantley stated that a lot of things are moving that should not be and that does not want to add or proliferate tri-vision to every static on the ground. She said that it is job to temper, to make decisions and interpret based on what is best for the city, what is best for the corridors, what is best for the drivers and what is best for the small businesses; she said she knows it is hard to look at it that way, but that if he can imagine revolving sign goes up, then the next one will go up and the next one will go up and that is not something wants to see. She noted that the Council has supported this with the digital. Council member Bradley said that is fair.

Council member Delgado asked Ms. Brantley her findings after looking at how other communities handle this issue; she asked what ordinances she looked at from other communities that address managing tri-vision signs. Ms. Brantley responded that she did not look at other ordinances; she said has been doing this since 2009, and it was a staff decision that does not allow tri-vision signs. She said it is interpreted like that.

Council member Delgado said that Ms. Brantley has to understand that a potential applicant who sees tri-vision signs in the community would reasonably expect to be able to apply for such a sign and be able to get it without receiving word that tri-vision signs are not permitted, even though they exist in the community. Ms. Brantley said she understands; she said sign companies know tri-vision signs are not allowed and do not even ask any more, and that works with sign companies. She gave an example of a sign company that changed its project recently so that a variance would not be required and then was able to get the sign that it wanted.

Council President Carroll asked Ms. Brantley if it is correct that the color red is not allowed on lit signs; she replied in the affirmative but said that is changing with the new code. Council President Carroll said that until recently, only three signs in Hattiesburg had been allowed to use red - at Forrest General Hospital, the University of Southern Mississippi and the Hattiesburg Convention Center - because they are not on city property, but on property owned by the county or the state. He said if someone came in and commented on, the response would have been that they are not the City of Hattiesburg.

Council President Carroll said this is a complicated issue. He said this is the first time he knows of that a public hearing has been held on a Council meeting day, as they usually are held on the Monday before the

meeting. He said there is information he wants to see, and that he needs time to and ask some questions of some people, and that he would like, when this item comes up, to consider tabling it until the next meeting so he can have time to do some research.

Council President Carroll asked Mr. Orr if he has completed his rebuttal. Mr. Orr replied that Ms. Brantley had stated that five different people will come to five different interpretations, and said that kind of goes to his point. Council President Carroll said this is an important decision and he would like a little time to do some research; he said that in court, the judge does not make an instant decision but goes back and does some research on his own. He said he would like to be afforded that also, because it is an important decision, not only for but also for the city and for the future.

Council President Carroll closed the appeal public hearing at 4:49 p.m., this the 3rd day of January, A.D., 2017.

Following the close of the hearing, Attorney Orr approached Council President Carroll and stated that the actual size of the tri-vision sign is 14' x 50'.

2017-228 Examples of Existing Tri-Vision Signs, Attorney Craig Orr, 1-3-17

Attachments: Attorney Craig Orr, Existing Tri-Vision Billboard Signs, 1-3-17
Existing Tri-Vision Signs, 1-3-17

2017-222 Appeal Public Hearing, Tri-Vision Billboard, 5012 Hwy 98 - Sign-In Sheet, 1-3-17

Attachments: APH Sign-In Sheet, 1-3-17

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