

November 5, 2020

Mark W. Rutherford  
Thrasher Buschmann & Voelkel, P.C.  
151 N. Delaware St., Suite 1900  
Indianapolis, IN 46204

Re: Response to Town of Mooresville Sign Ordinance

Dear Mr. Rutherford,

Thank you for your letter dated, September 28, 2020. As you know, the Town Council met in an Executive Session on October 20. While no final actions were taken, your client's threat of litigation gave them something to discuss.

The Town of Mooresville respectfully disagrees that its sign ordinance ignores the United States Supreme Court case of *Reed v. Town of Gilbert*, 576 U.S. 155 (2015). That case very clearly stands for the position that a municipality cannot enact a sign ordinance that discriminates based on content without satisfying the strict scrutiny analysis. Yet, the Court specifically states in that case that “on [] public property, the Town may go a long way toward entirely forbidding the posting of signs, so long as it does so in an evenhanded, content-neutral manner.” *Reed v. Town of Gilbert*, 576 U.S. 155, 173 (2015). In addition, the concurrence went so far as to provide examples of restrictions that are not content based, including “rules that distinguish between the placement of signs on private and public property.” *Id.* at 175.

Here, the provision at issue states: “Signs may not be installed at any of the following locations: (a) In any public right-of-way, unless specifically authorized by the legislative body or their designee.” On its face, the ordinance is content neutral, as it forbids signs on the Town's public right-of-ways, unless approved by the legislative body or the designee. The ordinance does not single out any particular form of speech or any type of sign. It most certainly does not target political or non-political speech or aim to silence only the Libertarian Party of Morgan County Indiana (“LPMCIN”).

Additionally, the Town of Mooresville respectfully disagrees that it is enforcing its sign ordinance in violation of the First or Fourteenth Amendments. As you likely know, Mooresville's UDO was amended effective January 1, 2019, and the Town began enforcing this ordinance soon thereafter.

When followed, the ordinance is clear and straightforward. In simple terms, there is a two-step process:

- (1) Signs are prohibited in the Town's right-of-way, unless permission is given;
- (2) If permission is denied or a sign is erected without prior approval and removed, the requestor is permitted to file an appeal with the Mooresville Board of Zoning Appeals.

Here, the LPMCIN contends the Town is enforcing this ordinance in a discriminatory manner because a sorority was permitted to erect signs and the LPMCIN was told to remove signs. Yet, the treatment of those signs in this instance is key: Unlike the sorority mentioned in your letter, which followed the plain language of the ordinance, the LPMCIN never sought prior approval before it repeatedly placed their signs in the Town's right-of-way. Instead, the LPMCIN placed its signs in the Town's right-of-way without permission, and in response, the Town's Administrator, David Moore, sent the LPMCIN a notice of violation letter in accordance with Section k of the UDO's *Violations and Penalties*.

Section k(i)(a)(2) states, in relevant part, as follows:

The Administrator may order the removal of any sign erected or maintained in violation of these provisions. (2) Temporary Sign: The Administrator shall give three (3) days' notice in writing to the owner of a temporary sign or place a notice of violation on the building, structure, or sign in violation. Said notice shall require that the sign be brought into compliance or it shall be removed (by the owner or by the Administrator).

Section k(i)(d) then states that, "[a]ny person aggrieved by any decision or order of the Administrator may appeal to the BZA per *Chapter 8, Section D.1: Appeals*."

When the LPMCIN appeared before the BZA in August 2020, with the Morgan County Republican Party Chair, as its designated representative, it was not, as you state in your letter, an attempt "to get permission" to place signs in the Town's right-

of-way. The BZA does not have the authority, per the UDO, to grant that permission. The UDO states that permission may only be given by the legislative body or its designee. The BZA only hears appeals made by the Town's Administrator when permission is denied or a notice of violation letter is sent.

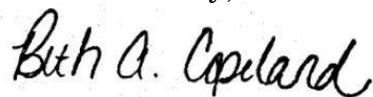
That is what occurred here. The LPMCIN, as well as the county Republican and Democrat parties, erected signs in violation of the UDO, and the Administrator sent notices of violation. The LPMCIN's presentation, made by the Republican Party Chair, in August 2020 to the BZA was an appeal of that decision.

In summation, the Town of Mooresville stands firm that its ordinance prohibiting signs on the Town's right-of-way is within the confines of the constitution, is content neutral and would pass a rational basis test. The *Reed* Court could not have been any clearer when it stated, "on [] public property, the Town may go a long way toward entirely forbidding the posting of signs." *Reed*, 576 U.S. at 173.

As applied and enforced, the Town is doing its best to uniformly enforce a new ordinance. The Town does not employ personnel whose sole function is to drive around the Town and look for signs that have been erected without permission. It relies, in large part, on the Town's constituents to provide notice to the Administrator of possible violations, and it relies on its employees who are already tasked with patrolling the Town's streets to provide that information.

With any new law, there are growing pains and adjustments made by those learning to follow it. The Town is optimistic that as this ordinance ages, the Town's constituents will become more familiar with the process and follow it properly. That being said, the Town has no intention of amending this ordinance at this time.

Sincerely,

A handwritten signature in black ink that reads "Beth A. Copeland". The signature is written in a cursive, slightly slanted style.

Beth Copeland  
Attorney for the Town of Mooresville

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