

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

OFFICE OF THE ZONING HEARING EXAMINER
FOR PRINCE GEORGE'S COUNTY

-----x
:
:
APRIL MACKOFF, CLEAR CHANNEL : Case No. CNU-51074-2020
OUTDOOR LLC :
:
-----x

A hearing in the above-entitled matter was held on
May 19, 2021, at the Prince George's County Office of
Zoning, County Administration Building, Room 2174, Upper
Marlboro, Maryland 20772 before:

Maurene McNeil
Hearing Examiner

A P P E A R A N C E S

On Behalf of the Applicant:

Arthur Horne, Esq.

On Behalf of People's Zoning:

Stan Brown

* * * * *

	<u>Page</u>
Testimony of April Mackoff	7
Testimony of John Ferrante	23

* * * * *

P R O C E E D I N G S

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

MS. MCNEIL: Good morning everyone, I'm Maurene McNeil and I'm going to be Zoning Hearing Examiner today. It is May 19, 2021, and we're here on a request by Clear Channel Outdoor LLC and Ms. Mackoff to certify a nonconforming billboard, and the case number is CNU-51074-2020. If counsel would identify themselves for the record.

(No audible response.)

MS. MCNEIL: Uh-oh. Is anyone here, Mr. Horne?

MS. MACKOFF: I don't. No.

MS. MCNEIL: Nope.

MR. BROWN: Testing. Can anybody hear me?

MS. MCNEIL: We hear you, Mr. Brown. Mr. Ferrante, can we hear you?

MR. FERRANTE: Yes, ma'am. Good morning.

MS. MCNEIL: Good morning.

MR. FERRANTE: Arthur, you're not muted, but we can't hear you.

MS. MCNEIL: Okay.

MR. BROWN: You may have to log off and call back in, Arthur.

MS. MCNEIL: And I can go with some preliminary items. Mr. Shelton (phonetic sp.), are you there?

(No audible response.)

MS. MCNEIL: Okay. Well, I don't know, Ms.

1 Mackoff, do you know if Mr. Shelton is your witness?

2 MS. MACKOFF: He is not.

3 MS. MCNEIL: Okay (indiscernible).

4 MR. SHELTON: I was having some technical
5 difficulties and I couldn't hear either. I'm a staff member
6 with the Town of Riverdale Park.

7 MS. MCNEIL: Okay. And I'm just going to say for
8 the record, but it doesn't look like anyone else is here.
9 If anyone is opposed to this item, you need to go into chat
10 and let me know because you would have a right to cross-
11 examine any witnesses. Everything is being recorded so
12 let's try to only have the person testifying to have their,
13 to not be mute and if you get knocked out for any reason, as
14 Mr. Horne is learning, you can come back in on the same
15 link. So --

16 MR. HORNE: Can you hear me now, Madam Examiner?

17 MS. MCNEIL: Yes.

18 MR. HORNE: Okay. But my camera is not working
19 now. In fact it's dark, it's dark, won't let me, oh there
20 we go, let's see, does that work?

21 MS. MCNEIL: Yes, we see you and we hear you.

22 MR. HORNE: All right. Okay. All right. Okay.
23 I was talking to Ms. Mackoff earlier on this thing, I don't
24 know what happened. But anyway, I'm sorry, my apologies.

25 MS. MCNEIL: Okay. So we were identifying

1 ourselves for the record. Counsel?

2 MR. HORNE: Good morning, Arthur Horne with the
3 Law Offices of Shipley and Horne, here on behalf of the
4 applicant, Clear Channel Outdoor LLC and Ms. April Mackoff.

5 MR. BROWN: I'm Stan Brown, People's Zoning
6 Council.

7 MS. MCNEIL: One preliminary thing before we start
8 and that is the very last exhibit is a letter from I guess
9 is Mr. Gregory Prindable (phonetic sp.) still owner of the
10 property or is a trust the owner and he's the trustee? Tell
11 me about who owns the property, who makes the --

12 MR. HORNE: Okay. You might want to swear in Ms.
13 Mackoff because she's going to --

14 MS. MCNEIL: Okay. Okay. Then wait a minute
15 before we do that, Ms. Mackoff, my whole purpose is and Mr.
16 People's Zoning Council can chime in but it doesn't appear
17 that he'll be here, correct? So normally we wouldn't have
18 this type of letter if you can't verify what's in it, but I
19 think you all probably have enough documents to verify
20 what's in it.

21 MR. HORNE: Right.

22 MS. MCNEIL: I just wanted you to know that's
23 going to be my question about Exhibit 22. Okay. Go, Mr.
24 Horne.

25 MR. HORNE: Thank you, Madam Examiner. Again for

1 the record, Arthur Horne, here on behalf of the applicant.
2 I have with me this morning two witnesses, Ms. April Mackoff
3 from the Clear Channel Outdoor LLC and Mr. John Ferrante
4 from Shipley and Horne, who has been accepted previously by
5 this Hearing Examiner as an expert in the land planning area
6 and zoning for Prince George's County.

7 Basically, Madam Examiner, this should be brief.
8 We are here today to confirm what Park and Planning's
9 findings are with reference to the billboard located at
10 Riverdale Park at 6313 Rhode Island Avenue. The testimony
11 will show that the Council enacted an legislation back in
12 2016 CB-84-2016 requiring all billboards to be certified so
13 that the county could have an idea of where the billboards
14 are, well their location, and as a result the testimony will
15 show that Clear Channel which is the majority owner of the
16 billboards hear in Prince George's County, has continually
17 gone through a process, painstaking at times, to have these
18 billboards certified. And we are here to indicate that this
19 process was followed in this particular case and that we
20 would just ask the Examiner to confirm the findings of Park
21 and Planning staff that it met the requirements for
22 certification.

23 And my first witness, Madam Examiner, is Ms. April
24 Mackoff.

25 MS. MCNEIL: Ms. Mackoff, do you swear or affirm

1 under the penalties of perjury that the testimony you shall
2 give will be the truth and nothing but the truth?

3 MS. MACKOFF: I do.

4 MR. HORNE: Thank you, Ms. Mackoff. Can you
5 please state your name and professional address for us,
6 please?

7 MS. MACKOFF: Sure, and good morning. My full
8 name is April Deranbuam (phonetic sp.) Mackoff and my
9 primary office at Clear Channel Outdoor is located at 9590
10 Lynn Buff Court, Suite 5, Laurel, Maryland 20723.

11 MR. HORNE: And what is your current position with
12 Clear Channel?

13 MS. MACKOFF: I serve as the Vice President of
14 real estate and public affairs for the Baltimore Washington
15 and Salisbury regions.

16 MR. HORNE: How long have you been employed by
17 Clear Channel Outdoor?

18 MS. MACKOFF: Approximately five years.

19 MR. HORNE: And as an employee of Clear Channel,
20 are you authorized to speak on behalf of the corporation in
21 this matter here this morning?

22 MS. MACKOFF: I am.

23 MR. HORNE: Did there come a time when you were
24 made aware that Prince George's County had adopted
25 legislation that would require all the billboards in the

1 county to be certified?

2 MS. MACKOFF: Yes, I was made aware of the
3 legislation's adoption in late 2016.

4 MR. HORNE: And are you familiar with CB-84-2016,
5 the legislation that we were referencing?

6 MS. MACKOFF: I am.

7 MR. HORNE: Okay. Approximately how many
8 billboards would you estimate here are in Prince George's
9 County, if you know?

10 MS. MACKOFF: So as you referenced, Mr. Horne,
11 Clear Channel Outdoor operates the vast majority of
12 billboards in Prince George's County but not all. So I
13 cannot give an accurate count of every location, if I was to
14 guess I would say that there are approximately 130 locations
15 within the county.

16 MR. HORNE: And then from that estimate how many
17 would you say that Chevy Chase owns or contractually
18 operates?

19 MS. MACKOFF: Approximately 110.

20 MR. HORNE: Okay. And as a result of the
21 obligation to certify the existence of these billboards, did
22 Clear Channel ask you to achieve in this requirement?

23 MS. MACKOFF: It did.

24 MR. HORNE: Okay. And can you tell the Examiner
25 and the People's Zoning Council how you went about this

1 task?

2 MS. MACKOFF: Sure. So as you're aware, once the
3 legislation was enacted, there was a process that needed to
4 be created with respect to how these applications were going
5 to be compiled, filed and processed. And so I met with Mary
6 Hamden (phonetic sp.) in early 2017 and we sat down and went
7 through the legislation. For example, the documentary
8 evidence that would be required, the language states that
9 it's, you know, including but not limited to, and so what we
10 tried to do is figure out what was a reasonable set of
11 documents that made both parties comfortable with satisfying
12 the requirements and that were easily obtainable. And so we
13 put our heads together, we created for example, a template
14 for the statement of justification because there had not yet
15 been one created. We talked about what the survey would
16 need to show in order to satisfy the requirements. So you
17 know we really worked it out, we worked out the process and
18 really, you know, after we filed the first one or two, it's
19 been you know a process that's been replicated time and time
20 again and it's been working well to the best of my
21 knowledge.

22 MR. HORNE: And to date how many applications for
23 certifications have you submitted, if you know,
24 approximately?

25 MS. MACKOFF: Approximately 70.

1 MR. HORNE: And have all those certifications
2 submitted and reviewed been approved by Park and Planning
3 and the Council?

4 MS. MACKOFF: No. Approximately 50 have been
5 certified in full and we have U&O's for those and then there
6 are of those say remaining 20 a number that have been
7 approved and then there are a number that are in the cue,
8 you know, they've been filed within the last month or two
9 and so they're not yet ripe for the approval, but they're in
10 process.

11 MR. HORNE: None of your applications have been
12 denied?

13 MS. MACKOFF: Correct.

14 MR. HORNE: How long does it generally take for
15 Park and Planning to process one of your applications?

16 MS. MACKOFF: The end take is usually fairly quick
17 but because the process includes posting signs on the
18 property and then going to District Council, from start to
19 finish it can take over six months.

20 MR. HORNE: Okay. And did there come a time when
21 someone on your behalf submitted an application for
22 certification for the billboard which is the subject of this
23 hearing at 6313 Rhode Island Avenue in Riverdale Park?

24 MS. MACKOFF: Yes. That application was submitted
25 in December of 2020.

1 MR. HORNE: And can you tell us a little bit about
2 the billboard and the application for that site?

3 MS. MACKOFF: Sure. So it is a, what we call back
4 to back bulletin structure, which means that there is one
5 billboard structure with a pole and then at the top of the
6 structure, the upper structure, there are two faces. A
7 bulletin is 14 by 48, so you know as you're driving through
8 the county those are the larger product that we have.

9 MR. HORNE: Okay. Although it's not an exhibit,
10 there is a list, an exhibit list of 22 exhibits. Have you
11 seen that list for the application in this case?

12 MS. MACKOFF: I have.

13 MR. HORNE: Okay. And exhibits that have been
14 marked just generally five through 10, Exhibits 14 and 15
15 and 18 through 22, if you were to look at the actual
16 exhibits there, are these the items provided to Park and
17 Planning to demonstrate the requirements for certification
18 in a particular case?

19 MS. MACKOFF: That's correct.

20 MR. HORNE: And as a result of the submission of
21 these documents, did Park and Planning agree with you that
22 the legal requirements for certification at the billboard at
23 this site had been met?

24 MS. MACKOFF: Yes, it did.

25 MR. HORNE: And do you agree with Park and

1 Planning's determination?

2 MS. MACKOFF: I do.

3 MR. HORNE: So subsequent to the nonconforming
4 application being approved by Park and Planning that the
5 staff label, this case was elected to be reviewed by the
6 District Council, is that correct?

7 MS. MACKOFF: That is correct.

8 MR. HORNE: And after the Council elected to
9 review the District Council, did you arrange to meet
10 virtually with the Mayor of Riverdale Park?

11 MS. MACKOFF: Yes, I did.

12 MR. HORNE: And did the Mayor indicate his concern
13 with this application?

14 MS. MACKOFF: He did.

15 MR. HORNE: What did he say to you?

16 MS. MACKOFF: He had questions with respect to the
17 potential digital conversion of this location.

18 MR. HORNE: What do you mean by digital
19 conversion?

20 MS. MACKOFF: So the legislation that we have been
21 referencing permits digital conversion of certain existing
22 billboard locations throughout the county. A digital
23 conversion can be either the removal of an existing
24 structure and a rebuild within 15 feet of the existing
25 structure or depending upon the engineering of the location,

1 it could be just a replacement of the upper structure. But
2 it would take the, what we called printed faces that are on
3 the subject billboard and replace them with LED faces and we
4 have converted other locations within the county. You may
5 see them as you're driving by.

6 MR. HORNE: Do you know the zoning of the property
7 in this particular case?

8 MS. MACKOFF: I do. It is M-U-T-C.

9 MR. HORNE: And do you know whether digital
10 billboard conversions are permitted in mixed-use zones?

11 MS. MACKOFF: They are not.

12 MR. HORNE: Were you able to explain that to the
13 Mayor on his inquiry?

14 MS. MACKOFF: I did and I explained about our site
15 selection as a company in that when we're looking at the
16 existing structures in the county we immediately preclude
17 any location that is zoned mixed-use because the Code does
18 not permit us to convert that location to digital.

19 MR. HORNE: Did there come a time where you
20 authorized Shipley and Horne to e-mail the Mayor to affirm
21 this point that no digital billboards will be allowed at
22 this site?

23 MS. MACKOFF: I did.

24 MR. HORNE: And Exhibit 17 here in this case is
25 that the e-mail that was sent to the Mayor?

1 MS. MACKOFF: Yes.

2 MR. HORNE: Thank you very much, Ms. Mackoff. I
3 don't have any more questions.

4 MS. MACKOFF: Thank you, Mr. Horne.

5 MS. MCNEIL: Leave it turned off. Ms. Mackoff,
6 Mr. Brown, if I may just briefly. Ms. Mackoff, Exhibit 22
7 that I talked about earlier is not a sworn affidavit which
8 would have been required by the law, but also it wasn't
9 signed until April 23, 2021. So the staff didn't see it,
10 did they? Mr. Horne asked you if the staff saw a certain
11 exhibit.

12 MS. MACKOFF: Sure. So no it was not submitted as
13 part of the initial application. You know we, as I
14 explained, had created sort of a template of documents that
15 Mary Hamden previously and now DPIE and Park and Planning
16 find acceptable. And you know when all of those
17 applications, we've never included direct correspondence
18 from the property owner.

19 MS. MCNEIL: Okay. And when you say Mary Hamden,
20 might that also be Mary Hampton (phonetic sp.)? I don't
21 know all of the employees but I'm just trying to verify for
22 the record, is it really Mary Hamden? Or might it be Mary
23 Hampton that retired? Do you know?

24 MS. MACKOFF: Sorry if I'm mispronouncing it.
25 Yes, it is --

1 MS. MCNEIL: But she --

2 MS. MACKOFF: -- Mary Hampton (indiscernible).

3 MS. MCNEIL: -- retired, the lady you're speak,
4 okay.

5 MS. MACKOFF: Correct, yes. She was a great loss
6 when she retired.

7 MS. MCNEIL: Yes.

8 MS. MACKOFF: But Kelsey Schaffer (phonetic sp.)
9 has been fantastic to work with as her replacement.

10 MS. MCNEIL: Can you just briefly go through some
11 of the panel history just to explain what it is? Because
12 I'm wondering perhaps the Council just looked at the
13 exhibits then wanted a little more clarification in the
14 record as to what they are. So one, I think in Exhibit 5
15 had some of it, so it's not really a question, or would Mr.
16 Ferrante, who would --

17 MR. HORNE: Mr. Ferrante is going to go through
18 all of those in detail.

19 MS. MCNEIL: Okay.

20 MR. HORNE: But that's okay, Ms. Mackoff can
21 answer.

22 MS. MCNEIL: We can wait, whichever.

23 MS. MACKOFF: I can just speak generally about
24 what panel histories are and then you know --

25 MS. MCNEIL: Okay.

1 MS. MACKOFF: -- Mr. Ferrante can get granular.

2 So with each of the two faces that --

3 MS. MCNEIL: Yes.

4 MS. MACKOFF: -- are located on the billboard
5 structure are sold, you know, independently of each other,
6 they're sold in different ways, whether it's locally,
7 nationally from another market. And so we have programs to
8 keep track of all our sales and this program produces
9 reports which show at any given date in history that, you
10 know we have a record of, which advertisers are on a
11 specific billboard face. It'll say, you know, the name of
12 the advertiser, how long the campaign is, it might even give
13 you a flavor of what the copy shows, you know, for example
14 if Coke is promoting a certain flavor, like cherry coke, it
15 might even, you know, get that specific. But it's a way for
16 our company to track internally what is booked on a specific
17 board. And then I can, you know, allow Mr. Ferrante to
18 elaborate on the submitted panel histories.

19 MS. MCNEIL: Okay. And have you visited the site?

20 MS. MACKOFF: I have.

21 MS. MCNEIL: Are you familiar with that area?

22 MS. MACKOFF: I --

23 MS. MCNEIL: Or it might be Mr. Ferrante, because
24 I'm familiar with the area but not this billboard. So I was
25 just hoping that somebody could give me a better idea of

1 where it is exactly.

2 MS. MACKOFF: Sure.

3 MS. MCNEIL: But he can do it if you --

4 MS. MACKOFF: No, I --

5 MS. MCNEIL: -- (indiscernible) talk about the
6 McDonald's on East-West and Route 1. Is it close to that
7 one or?

8 MS. MACKOFF: So if you're in the parking lot,
9 sort of under the overpass adjacent to the residential and
10 you look up, you'll see it.

11 MS. MCNEIL: It's right there? I never even
12 noticed. Okay.

13 MS. MACKOFF: Yeah, yeah, I mean --

14 MS. MCNEIL: There's no way (indiscernible) --

15 MS. MACKOFF: -- correct that it's, it's a Rhode
16 Island Avenue address, but the impression, and that's sort
17 of how we measure success, right, on a billboard, is it's
18 from East-West. So I think now you're probably visualizing
19 it.

20 MS. MCNEIL: Yes. And one last thing, so now that
21 I'm visualizing it, there are two boards on both sides, so
22 it's actually four boards or are there only two boards?
23 Like if I were behind it, do I see something or only on the
24 front?

25 MS. MACKOFF: There are, we call them faces.

1 MS. MCNEIL: Okay.

2 MS. MACKOFF: So there are two faces. As you're
3 aware in the county we have some locations that have more
4 than two faces, they're typically what we call the posters,
5 the smaller billboards. And sometimes you'll have a
6 location where there are what we call a side by side and a
7 back to back. So you could have let's say four posters on
8 one billboard structure. Because the size of these faces
9 being 14 by 48, we have one on each side of the billboard.

10 MS. MCNEIL: Okay. Okay. Mr. Brown?

11 MR. BROWN: Yes, good morning. I just have one or
12 two questions. But just to give a little bit of history
13 about how we got here, back in the 80's and 90's I
14 represented through here Outdoor Advertising which was one
15 of the predecessors to Clear Channel in Prince George's
16 County. And Clear Channel bought out Revere I think in the
17 late 90's, early 2000's and back around '92, '93, the
18 Examiner represented to the county concerning the law to
19 outlaw billboards and I represented Revere. And at that
20 particular point in time the county did not put a
21 requirement that all billboards be certified as a
22 nonconforming use. And after 10 or 15 more years everyone
23 realized that we needed to have that and then in 2016, 2000
24 whatever it was, we came to enact the current law. And so
25 that's how we got where we are. But I say all that to ask

1 you, Ms. Mackoff, I thought I was told there were 300
2 billboards in the county back in the 1990's. As you
3 testified earlier that there were approximately 100 or so,
4 are you sure there are only 100 or so billboards in the
5 county?

6 MS. MACKOFF: So let me clarify the statement that
7 I made. So when I state locations, what I mean are
8 billboard structures. Billboard structures can have, as I
9 indicated, four faces, one face, anything in between. So I
10 don't know if that is part of the potential discrepancy
11 because you're correct that, you know, if you're counting
12 faces it would be far more than the 110, approximately, that
13 we operate and then the other structures that are in the
14 county that are operated by a competitor. The way that
15 these applications work is I need to file an application for
16 each tax parcel that has a billboard on it and so there are
17 even scenarios where we could have two structures on one tax
18 parcel and collectively there could be six faces, so you
19 know that may be part of the discrepancy. Also, you know,
20 given the nature of our business between road widening's,
21 lack of meeting of the minds with landlords, there is
22 always, unfortunately, a loss of billboards over time. It's
23 not necessarily by choice but it happens. You know, there
24 could be a condemnation, for example. So there have been
25 structures removed over the years, but you know, my best

1 guess would be the discrepancy between the number that I
2 gave and the number that you were citing would be maybe
3 because they were counting faces versus structures.

4 MR. BROWN: All right, that may very well be. So
5 if we say billboards for the sake of counting them for Clear
6 Channel, one freestanding pole, if you will, you have
7 approximately how many freestanding poles for billboards?

8 MS. MACKOFF: So we have 110 locations, more or
9 less. Most of those locations have one structure located on
10 them. The number of faces vary. I can think of a handful
11 that have more than one structure but those are definitely
12 the minority.

13 MR. BROWN: And over the last five or six years,
14 you know we seem to get one or two or three of these cases
15 per year, and I know it does take approximately six months
16 to process, but why has not Clear Channel vowed to certify
17 all of its billboards? What's --

18 MS. MACKOFF: So as I mentioned, we've filed
19 approximately 70 applications to date and approximately 50
20 of those are full certified. We recognize that you know we
21 still have a number of locations to certify. One of the
22 pieces of documentary evidence that is required as part of
23 an application is a survey, which is not produced in house,
24 we have to hire an outside third party surveyor. There is a
25 time and cost to, you know, that engagement. I can tell you

1 that, you know, COVID, of course did slow down the process,
2 unfortunately, but we have every intent to certify all of
3 our locations.

4 MR. BROWN: Well, Mr. Horne, if we could put in
5 the record before it closes a copy of the deed for the
6 property owner indicating that the gentleman who filed the
7 April 21st letter is in fact the owner of the property.

8 MR. HORNE: It's a trust and we could do that.
9 You know, alternatively, we could have that letter sworn, or
10 it'd be a sworn affidavit in that format. If that would
11 work, that's no problem.

12 MR. BROWN: Either one, but I think we ought to
13 have the deed in the file as well.

14 MR. HORNE: Okay. We'll take care of that.

15 MR. BROWN: For it not to be just the SDAT
16 documentation that the trust owns the property.

17 MR. HORNE: Okay.

18 MR. BROWN: No other --

19 MR. HORNE: All right.

20 MR. BROWN: Thank you.

21 MS. MCNEIL: I'm sorry, one other quick question
22 and that is about the SDAT documentation that the LLC is in
23 good standing. I've never seen one that looks like the one
24 in this file, so is this a new one or is this, is it
25 possible to leave the record open for what we usually see?

1 I'm sorry that I'm not, it's Exhibit 16 if anybody can pull
2 it up.

3 MR. BROWN: Yes, that's what SDAT prints out on
4 your computer for businesses that (indiscernible) the
5 property.

6 MS. MCNEIL: Okay.

7 MR. HORNE: All right.

8 MS. MCNEIL: Because you know how we normally get
9 the actual certificate but maybe because of, maybe COVID
10 again. So okay so we're good with Exhibit 16 everyone, you
11 don't have to put it up.

12 MR. HORNE: Thank you.

13 MS. MCNEIL: No further questions for me.

14 MR. HORNE: Okay. Mr. Shelton.

15 MS. MCNEIL: Mr. Shelton said he's just listening
16 on behalf of the Town and not opposed --

17 MR. HORNE: Okay. I missed that.

18 MS. MCNEIL: -- so.

19 MR. SHELTON: That's correct, yeah.

20 MR. HORNE: I'm sorry, I missed that.

21 MS. MCNEIL: That's right, you were gone for a
22 while.

23 MR. HORNE: Okay. Let me ask if Mr. Ferrante
24 would, do you want to swear him in, Madam Examiner?

25 MS. MCNEIL: Sure. Mr. Ferrante, do you swear or

1 affirm under the penalties of perjury that the testimony you
2 shall give will be the truth and nothing but the truth?

3 MR. FERRANTE: I do.

4 MR. HORNE: Can you state your name and
5 professional address for the record, please?

6 MR. FERRANTE: My name is John Ferrante,
7 professional address is 1101 Mercantile Lane, Suite 240,
8 Largo, Maryland 20774.

9 MR. HORNE: And what is your current position?

10 MR. FERRANTE: I'm a Senior Planner and paralegal
11 with the Law Offices of Shipley and Horne, PA.

12 MR. HORNE: And what was your previous work
13 history prior to that?

14 MR. FERRANTE: I was with the Prince George's
15 Planning Department as a planner in the Development Review
16 Division for 16 years, five years with the Prince George's
17 County Department of Public Works as a project coordinator
18 and inspector. And eight years in a private civil
19 engineering firm as a field coordinator and surveyor.

20 MR. HORNE: In your previous appointment with Park
21 and Planning, did you ever review and opine on nonconforming
22 use applications?

23 MR. FERRANTE: Yes, I've been the assigned
24 reviewer for numerous NCU cases during my time with Park and
25 Planning. I was responsible for the administrative

1 certification of nonconforming use certifications when I was
2 with the Permit Review Section. This included the review of
3 the Site Plans determining whether documentation was
4 sufficient enough to warrant staff level certification. I
5 also was the assigned planner for numerous NCU applications
6 during my time with the Zoning Section.

7 I was responsible for preparing the Staff Reports
8 for these cases, presenting the recommendations to the
9 Planning Board and the ZHE at the time of public hearing.
10 And I was also responsible for preparing the Planning Board
11 resolutions for these cases after the hearing.

12 MR. HORNE: So would you say you've reviewed and
13 worked on several dozen of these cases or is it possible to
14 put a number on it?

15 MR. FERRANTE: I would. I would, it would be hard
16 to say the exact number, but I'd estimate somewhere in the
17 neighborhood conservatively of 35 to 45 cases.

18 MR. HORNE: Okay. Have you ever testified in the
19 Zoning Hearing Examiner and have been previously accepted as
20 an expert in land planning?

21 MR. FERRANTE: I have. I've been accepted in the
22 fields of zoning, land use and planning.

23 MR. HORNE: Okay. In your current position, have
24 you reviewed and evaluated or filed nonconforming use
25 applications on behalf of the applicant here this morning,

1 Clear Channel?

2 MR. FERRANTE: Yes, I have. After CB-84-2016 was
3 approved, I've assisted Ms. Mackoff with the filing of
4 numerous applications with Park and Planning, and obtaining
5 the issued use and occupancy permits for these structures
6 after they had been certified. As she stated, at this time
7 approximately 50 applications have been fully certified and
8 have obtained issued use and occupancy permits from DPIE.
9 Another 10 have been recommended for approval, have been
10 through the Council review process already and are awaiting
11 final inspections in the issuance of a U&O permit. And
12 finally, an additional 10 have been filed and are still
13 pending in the review process.

14 MR. HORNE: So in your position in the public and
15 Park and Planning and the private sector currently, are you
16 familiar with the requirements for the submission and Park
17 and Planning staff level approval of nonconforming use
18 certificates in general and billboards in particular?

19 MR. FERRANTE: I am familiar with the staff level
20 approval of NCU applications. I moved to the private sector
21 not long after CB-84-2016 was enacted, so I never was a
22 staff reviewer for a billboard case. But I've been on the
23 other side many times now. The criteria for these based on
24 CB-84-2016 to me comes down to one finding, which is Section
25 27-244(b) (2) (E) (1) which states, excuse me, in the case of

1 outdoor advertising signs, the requirements of Section 57-
2 244(b) (2) (B) are not applicable. That's the section that
3 refers you back to documentation for every 180 days.

4 Documentary evidence including, but not limited
5 to, deeds, tax records, business records, plats, development
6 plans, permits, public utility installation or payment
7 records, photographs or sworn affidavits showing that the
8 sign was constructed prior and has operated continuously
9 since January 1, 2002. That's the --

10 MS. MCNEIL: Mr. Ferrante, if I can stop you for a
11 second. So Mr. Horne, are you moving him as an expert in
12 this hearing?

13 MR. HORNE: Well, here's the thing, I think he can
14 be a facts, I was waiting until the end because I will
15 submit him as an expert if you feel it's necessary, but his
16 experience in both the public and the private sector and his
17 work on this case. So let me go ahead, yes, let me go
18 ahead and offer him as an expert in land use and zoning in
19 this particular case.

20 MS. MCNEIL: Okay. Unless you all object, I
21 usually just have them as experts in land use planning,
22 because I figure they all go together. I've never done
23 zoning and land use planning, so if you have no objection --

24 MR. HORNE: Land use planning.

25 MS. MCNEIL: Okay. Thank you. He'll be accepted

1 as an expert in the area of land use planning.

2 MR. HORNE: Okay. Thank you, Madam. So Mr.
3 Ferrante, so the subsection that you're reading from the
4 Zoning Ordinance, can you repeat what it is again?

5 MR. FERRANTE: Sure. It's 27-244(b)(2)(E)(1).
6 Sorry for the long name, but that's where it is. But again
7 that section refers back to the typical 180 day gap that a
8 nonconforming use cannot exceed, does not apply to outdoor
9 advertising signs.

10 MR. HORNE: Okay.

11 MR. FERRANTE: And it states the documents that
12 can be accepted and as Ms. Mackoff referred to, it allows
13 some room for other documents that would help prove your
14 case. So to me and this is the finding that's applicable
15 for these structures.

16 MR. HORNE: Okay. So based on the statute and
17 based on the documents and the exhibits, can you go through
18 some of the exhibits and explain to the Hearing Examiner and
19 the People's Zoning Council why these documents are
20 applicable in the review of the acceptance of the
21 nonconforming use for this particular case?

22 MR. FERRANTE: I can, and I took some time
23 yesterday to try to sort out the exhibit list we have and
24 determine what's in each exhibit. Some of these things I
25 don't have access to, you know, such as the, you know, some

1 of the ones at the beginning, the administrative ones. But
2 the important ones here are Exhibit 14, which is the lease
3 agreements, I think we have three exhibits that are lease
4 agreements. They're not just three lease agreements. They
5 include a set of lease agreements under each one of those
6 exhibits. So Exhibit 14, for instance, it has a 1972
7 building permit at the back of it that was issued in April
8 31, 1972. It was a for a new base for the sign, it actually
9 references a prior approved sign permit on the building
10 permit. So we know it's older than 1972, because that's
11 when they actually replaced the base on it. In that same
12 exhibit there are lease agreements, and I won't go through
13 all of them but they are continuously from 1971 through
14 1997, and they hit every year where a lease agreement
15 existed for the structure.

16 MS. MCNEIL: So if I may stop you, if the record
17 says at least 1976 is there a reason we didn't say at least
18 1972? I mean it really doesn't matter, I just don't know
19 why the record said 1976.

20 MR. FERRANTE: I wasn't aware that the record --

21 MS. MCNEIL: And that could be, and that's
22 actually in this record to it must have been something
23 submitted to staff originally.

24 MR. FERRANTE: Well, I don't think we --

25 MS. MCNEIL: I think you all (indiscernible) it's

1 been there a long time but you're saying given this building
2 permit it might have been as early as 1972.

3 MR. FERRANTE: Right.

4 MS. MCNEIL: That's your testimony?

5 MR. FERRANTE: Right. And since Clear Channel
6 wasn't the original owner of the billboard, you know, we're
7 not exactly sure sometimes with these structures when they
8 were actually built. It's a little challenging to go back
9 and find the original documentation. But we know it existed
10 at 1972, we know it changed the base and it references an
11 older application of the approved sign permit. So Exhibit
12 14 includes 1971 through 1997.

13 I'll move on to Exhibit 21, also lease agreements,
14 1997 through the year 2000.

15 MS. MCNEIL: Okay.

16 MR. FERRANTE: Then Exhibit 15, I know I'm jumping
17 around, I'm just taking them in chronological order of the
18 years, Exhibit 15 is lease agreements from the year 2000 to
19 2010. That was with Eller Media and Greg's Towing. And
20 then Exhibit 18 is 2010 through 2025. That's into the
21 future, so that's the current lease agreement with Gregory
22 Prindable, the current owner. So we have a set of lease
23 agreements provided consistently from 1971 through the
24 current 2021.

25 Exhibit 19 and 20, those are the panel history

1 reports we talked about for panel reports 1 and 2. One is
2 for one side of the panel, the other is for the other side
3 of the panel. Those descriptions are from 2015, January
4 2015 through February of 2020. They also include panel
5 revenue amounts from 2003 to 2019. So I'm not sure what
6 exhibit number this is, Madam ZHE, but Park and Planning has
7 confirmed that they transmitted historic aerial photos that
8 we submitted for the record. I assume they're probably with
9 Exhibit 2 or 3, but they confirmed they sent it over.

10 MS. MCNEIL: Actually, I'm sorry, maybe it's
11 Exhibit 5, do you want to take a moment to verify? Can
12 someone put up Exhibit 5, please? Because it's showing --

13 MR. FERRANTE: I think --

14 MS. MCNEIL: -- layers.

15 MR. FERRANTE: Yes, I think you're right, because
16 the first document in that is a zoning sketch map. That
17 makes sense. So anyway, I just wanted to refer back, those
18 aerial photos that were submitted that show the billboard,
19 they include the years 1993, 1998, 2000 and then 2005 all
20 the way through 2018. Now you can see there's some years
21 skipped in there, but that's just simply because these are
22 the years that P.G. Atlas has aerial photos available. So
23 they were submitted for every year that P.G. Atlas has
24 available aerial photos.

25 MS. MCNEIL: Okay. Can anyone scroll down, it's

1 some aerials right after that. I just want to make sure
2 that's what Mr. Ferrante is talking about.

3 MR. FERRANTE: That's it.

4 MS. MCNEIL: Okay.

5 MR. FERRANTE: And you can see if you can scroll a
6 little farther down, they have the year checked at the
7 bottom of each one of them. So again that was 1993, 1998,
8 2000, 2005 through 2018.

9 So, and finally, you guys have had a lot of
10 discussion about Exhibit 22. That's a signed affidavit from
11 the property owner, Gregory Prindable, stating in his
12 opinion that the billboard's been existing since he
13 initially became a tenant in 1981 and it continued to exist
14 from 1990 when he purchased the property to the present.

15 MS. MCNEIL: Okay. But it's not an affidavit,
16 that's the problem, it's a letter.

17 MR. FERRANTE: Okay. It's a letter.

18 MS. MCNEIL: Okay.

19 MR. FERRANTE: So those are the exhibits I think
20 they kind of frame a big, you know, accurate history of the
21 property and I think they clearly go back and demonstrate
22 that the sign has been constructed prior to and has operated
23 continuously since January 1, 2002.

24 MR. HORNE: Thank you. Can you hear me John?

25 MR. FERRANTE: I can.

1 MR. HORNE: Okay. Because we just had a blackout
2 here for a second and everything got wiped out, so I
3 apologize, I missed your last two minutes. But in any
4 event, so do you have an opinion as to whether Park and
5 Planning staff is correct in determining that the criteria
6 has been met for the certification of this nonconforming
7 billboard and then why or why not?

8 MR. FERRANTE: Yes, I would concur with Park and
9 Planning's recommendation as this application clearly
10 satisfies the criteria in 27-244(b)(2)(E)(1), and I believe
11 the applicant has clearly demonstrated that the sign was
12 constructed prior to and operating continuously since
13 January 1, 2002.

14 MR. HORNE: Okay. Thank you very much. That's
15 all I have for Mr. Ferrante.

16 MS. MCNEIL: Mr. Brown?

17 MR. BROWN: No questions, thank you.

18 MS. MCNEIL: Thank you. I have no questions.

19 MR. HORNE: Thank you. So Madam Examiner, we will
20 just say that the testimony here today is consistent with
21 what the Park and Planning staff found that this application
22 met the criteria of CB-84 and counting the billboards and
23 that this billboard has been in existence in the county
24 since at least 2002 which is the requirement of the statute.
25 And the evidence that was presented through the application

1 process demonstrates that, you know, again we will adhere to
2 the request and include the deed and the sworn affidavit.
3 However, you know, generally speaking an affidavit is not
4 necessary unless you don't have the sufficient documentary
5 evidence to submit. And so in this, that's why the Park and
6 Planning did not need that letter or sworn affidavit from
7 the owner, because they had all the other evidence they
8 needed to be able to move forward, but as requested, again,
9 we will add that to the record. And we do want to
10 acknowledge as Ms. Mackoff said, that the Mayor and the town
11 was concerned about the element of a digital billboard. We
12 wanted to say as was stated earlier that the digital
13 billboards are not permitted by law in a mixed-use zone and
14 that if the Hearing Examiner would take notice of the
15 current zone and the proposed zone for the CMA, that also
16 would be a zone that would not be permitted, digital
17 billboards would not be permitted in. So we just wanted --

18 MS. MCNEIL: Well you're probably more up on that
19 at the moment than I am. What is the proposed zone in the
20 ZMA?

21 MR. HORNE: It's similar to mixed-use. John, do
22 you know off the top of your head? Because I remember we
23 looked at that.

24 MR. FERRANTE: Yes, I believe it's mixed-use
25 legacy, which is what I think most of the --

1 MR. HORNE: That you have --

2 MS. MCNEIL: Okay.

3 MR. FERRANTE: -- mixed-use is going to.

4 MS. MCNEIL: Okay. I guess, Mr. Shelton, did you
5 want to testify or you just wanted to listen?

6 MR. SHELTON: I just, I just came to listen, but
7 thank you.

8 MS. MCNEIL: Okay. And this property is, I'm sure
9 it is, but it is within the municipal boundaries of the
10 town?

11 MR. HORNE: Yes, it is.

12 UNIDENTIFIED MALE PERSON: That's right.

13 MR. BROWN: So Mr. Horne, was the property owner
14 not required to sign the application?

15 MR. HORNE: Let me ask Ms. Mackoff. I believe you
16 had a power of attorney from the property owner that, let me
17 just turn to her to make sure.

18 MS. MACKOFF: That is correct. Typically we have
19 a limited power of attorney in our leases to act as an agent
20 for the property owner with respect to any permits or
21 applications that are required with respect to the billboard
22 structure only. So you know, for example, we could not
23 apply to rezone the property, but you know if it's to
24 certify the location as in a nonconforming use, repair the
25 structure, remove the structure, anything within the

1 confines of the billboard structure which Clear Channel owns
2 we do have that limited power of attorney.

3 MR. BROWN: I don't have any problem with that.
4 But one, you probably need to have the power of attorney in
5 this file, but two, the Zoning Ordinance requires that the
6 property owner sign the applications, regardless of whether
7 he had given a power of attorney for the tenant in this
8 case, Clear Channel, to take certain actions concerning the
9 property.

10 MR. HORNE: Okay. So we will submit that limited
11 power of attorney, I saw an e-mail where Park and Planning
12 originally opined that the limited power of attorney would
13 be sufficient --

14 MS. MACKOFF: Yes.

15 MR. HORNE: -- for the application process.

16 MR. BROWN: They can't override the Zoning
17 Ordinance. The Zoning Ordinance --

18 MR. HORNE: I understand that. I just wanted to
19 make sure that, and we can put that, actually we have that
20 e-mail where Park and Planning opined about that back in
21 2016 or 2017 when this process was established. But be that
22 as it may, we will you know have the property owner and
23 stuff, you know, submit this in the record as well.

24 MR. BROWN: All right.

25 MR. FERRANTE: And Mr. Horne, I believe the

1 current lease agreement is in there, which Ms. Mackoff
2 correct me if I'm wrong, I think that lays out the power of
3 attorney in the lease agreement.

4 MS. MACKOFF: Yes, it does. It would be not the
5 current amendment to the lease which is the document that
6 Mr. Ferrante referenced goes into the future into 2025, it
7 would be the underlying lease which that amendment amends.
8 That references the limited power of attorney.

9 MR. FERRANTE: That's Exhibit 18.

10 MR. BROWN: Again though, the power of attorney is
11 between the tenant, Clear Channel and the owner. That's not
12 between the county and the owner with regards to filing the
13 application. So Mr. Horne, refresh my memory, a
14 nonconforming use is not required to ethics affidavits, is
15 that correct?

16 MR. HORNE: Correct.

17 UNIDENTIFIED PERSON: That's correct.

18 MR. BROWN: All right.

19 MS. MCNEIL: But Exhibit 2 it saying it was signed
20 by the Gregory Prindable Living Trust. But someone else did
21 it on its behalf? The application?

22 MR. HORNE: It's --

23 MS. MACKOFF: Yes, that's correct. I sign on
24 behalf of the owner when I submit the applications, if we
25 have a limited power of attorney.

1 MS. MCNEIL: Okay. Well, you know what we'll
2 leave the record open for you all to address this matter in
3 whichever you see fit. Because I would note for the record
4 that certain parts of the Zoning Ordinance allows an
5 authorized agent to sign on behalf of the applicant. I
6 haven't been able to research it that quickly for this. So
7 whatever you have to put in to satisfy Mr. Brown in the next
8 step of this, but you may determine that what you have is
9 sufficient. Just let us know.

10 MR. HORNE: We'll get it in right away, because
11 again, you know, we're trying to keep the timing going on
12 these matters.

13 MS. MCNEIL: Mr. Brown, were you finished? I'm
14 sorry.

15 MR. BROWN: Well I'm not trying to delay them, I
16 mean since we have a letter in the record from the property
17 owner --

18 MS. MCNEIL: No, we don't. Now I did object to
19 that. I'm waiting for it either to be, oh and you remind
20 me, Mr. Horne, 27-224(b)(2)(E) gives a list of items that
21 you must include but it's not limited to and it includes
22 sworn affidavit.

23 MR. HORNE: That is --

24 MS. MCNEIL: A signed sworn affidavit.

25 MR. HORNE: That's true, Madam Examiner, but if

1 you would read it, it will say these are the things that
2 they can consider and the sworn affidavit is one of the
3 items that's listed. Again, whenever you file for a
4 nonconforming use that language was put in there --

5 MS. MCNEIL: I have the language, by the way.

6 MR. HORNE: Okay.

7 MS. MCNEIL: I do have the language.

8 MR. HORNE: Okay. To --

9 MS. MCNEIL: (Indiscernible) notwithstanding any
10 provision to the, wait a minute, E. In the case of outdoor
11 advertising signs documentary evidence including but not
12 limited to deeds, tax records, et cetera, et cetera, and
13 sworn affidavits showing that it was constructed prior to
14 and operated continuously since January 1st.

15 MR. HORNE: That's right.

16 MS. MCNEIL: So my only issue is if he, I would
17 allow his testimony if he had been here, I would allow the
18 letter if it was a sworn affidavit.

19 MR. HORNE: Understood.

20 MS. MCNEIL: So (indiscernible).

21 MR. HORNE: I understand. We'll get it to be a
22 sworn affidavit and submit it.

23 MS. MCNEIL: All right. And you'll submit
24 something to address Mr. Brown's concerns about Clear
25 Channel's ability to sign on behalf of Prindable? Okay.

1 MR. HORNE: Yes, ma'am.

2 MS. MCNEIL: I think that's all the record is left
3 open for. Right?

4 MR. HORNE: Mr. Brown, is that it?

5 MS. MCNEIL: Anymore, Mr. Brown? I keep cutting
6 you off, I'm sorry.

7 MR. BROWN: Yes, that's it. I had asked for the
8 SDAT for the property owner, just put that in there.

9 MS. MCNEIL: Right.

10 MR. HORNE: SDAT. Okay. We've got that as well.

11 MR. BROWN: All right.

12 MS. MCNEIL: And I thank you all for being here
13 and the record --

14 MR. HORNE: Thank you very much.

15 MS. MCNEIL: -- will close as soon as those items
16 are received and as you know a decision has to be filed in
17 less than 30 days and you all have a 15 day appeal period.

18 MR. HORNE: Thank you, ma'am.

19 MS. MCNEIL: So I'm aware of it so no one has to
20 send me an e-mail. Okay. Thank you all so much.

21 MR. HORNE: Thanks a lot.

22 MS. MACKOFF: Thank you.

23 MR. HORNE: Have a good one. Thanks a lot.

24 MS. MCNEIL: Wait for staff to tell me it's over.

25 Bye-bye everyone.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

(Whereupon, the hearing was concluded.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Prince George's County Office of the Zoning Hearing Examiner in the matter of:

APRIL MACKOFF, CLEAR CHANNEL OUTDOOR LLC

Case No. CNU-51074-2020

By:

Diane Wilson

Diane Wilson, Transcriber