



**AGENDA**  
CHARTER TOWNSHIP OF MERIDIAN  
PLANNING COMMISSION – REGULAR MEETING  
April 8, 2019 7PM

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1. CALL MEETING TO ORDER
2. PUBLIC REMARKS
3. APPROVAL OF AGENDA
4. APPROVAL OF MINUTES
  - A. March 25, 2019 Regular Meeting – *Not available*
5. COMMUNICATIONS
  - A. None.
6. PUBLIC HEARINGS
  - A. Rezoning #19050 (Fedewa Builders), rezone approximately 1.12 acres from RR (Rural Residential) to RX (One and Two Family Residential) at 5921 and 5929 Okemos Road.
7. UNFINISHED BUSINESS
  - A. Zoning Amendment #19030 (Meridian Township), amend Section 86-2 of the Code of Ordinances and add Section 86-445 to establish the Commercial Medical Marihuana Facilities Overlay District.
8. OTHER BUSINESS
  - A. 2019 PC Goals.
  - B. Content neutral sign policy.
9. TOWNSHIP BOARD, PLANNING COMMISSION OFFICER, COMMITTEE CHAIR, AND STAFF COMMENTS OR REPORTS
10. PROJECT UPDATES
  - A. New Applications – None
  - B. Site Plans Received – None
  - C. Site Plans Approved – None
11. PUBLIC REMARKS
12. ADJOURNMENT
13. POST SCRIPT: PETER TREZISE

**AGENDA page 2**  
CHARTER TOWNSHIP OF MERIDIAN  
PLANNING COMMISSION MEETING  
April 8, 2019 7:00 pm

**TENTATIVE PLANNING COMMISSION AGENDA**

**April 22, 2019**

1. PUBLIC HEARINGS
  - A. None.
  
2. UNFINISHED BUSINESS
  - A. Rezoning #19050 (Fedewa Builders), rezone approximately 1.12 acres from RR (Rural Residential) to RX (One and Two Family Residential) at 5921 and 5929 Okemos Road.
  
3. OTHER BUSINESS
  - A. Content neutral sign policy.
  - B. Master Plan update.

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Individuals with disabilities requiring auxiliary aids or services should contact: Principal Planner Peter Menser, 5151 Marsh Road, Okemos, MI 48864 or 517.853.4576 - Ten Day Notice is Required.  
Meeting Location: 5151 Marsh Road, Okemos, MI 48864 Township Hall

Providing a safe and welcoming, sustainable, prime community.





To: Planning Commission

From: Peter Menser, Principal Planner

Justin Quagliata, Assistant Planner

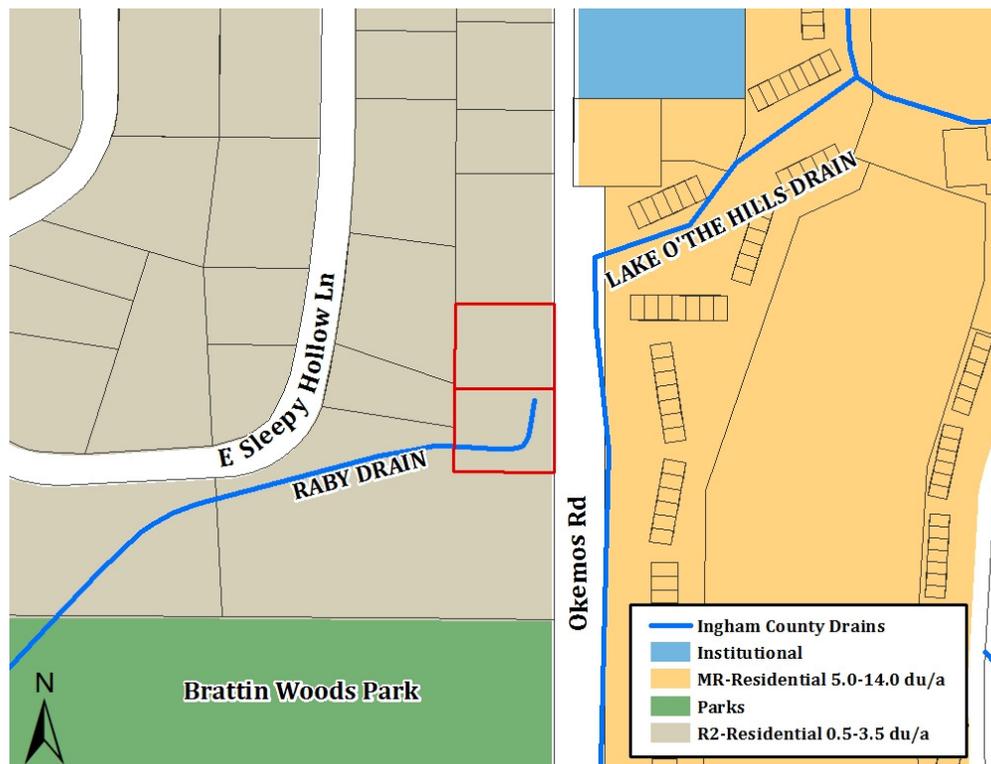
Date: April 4, 2019

Re: **Rezoning #19050 (G.S. Fedewa Builders)**, rezone approximately 1.12 acres located at 5921 and 5929 Okemos Road from RR (Rural Residential) to RX (One and Two Family Residential).

G.S. Fedewa Builders has requested the rezoning of two unplatted lots, approximately 1.12 acres in total size, located at 5921 and 5929 Okemos Road from RR (Rural Residential) to RX (One and Two Family Residential). The site is located on the west side of Okemos Road, north of Brattin Woods Park, and west of Lakeside Village North Condominiums (93 total units). The two parcels have approximately 290 feet of total frontage on Okemos Road.

The Future Land Use Map from the 2017 Master Plan designates the subject property in the R2-Residential 0.5 – 3.5 dwelling units per acre (du/a) category.

### 2017 FUTURE LAND USE MAP



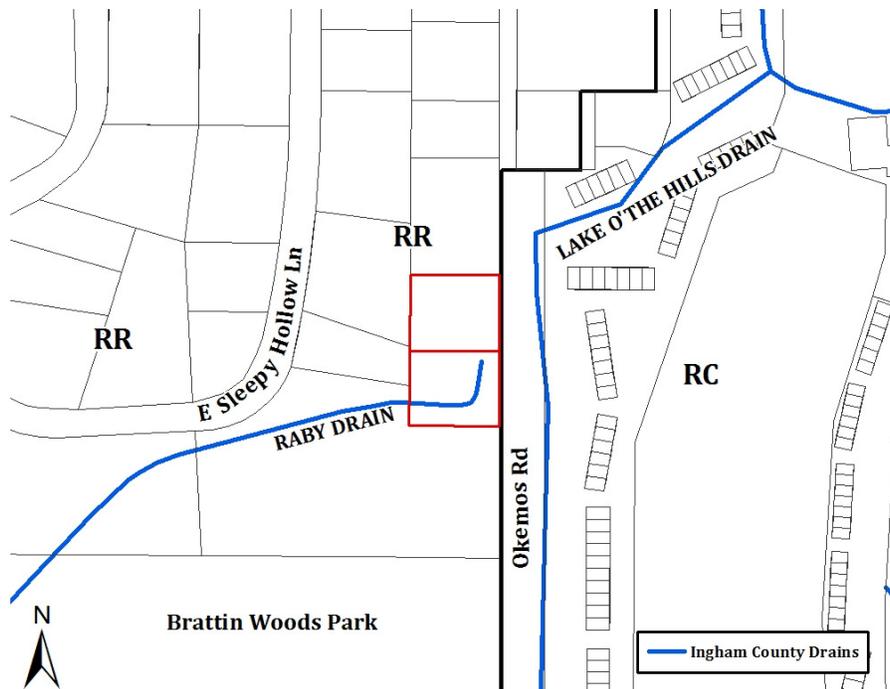
**Zoning**

The property is currently zoned RR (Rural Residential), which requires a minimum of 200 feet of lot width and 40,000 square feet of lot area. The requested RX zoning district requires a minimum of 100 feet of lot width and 11,000 square feet of lot area for duplexes and a minimum of 65 feet of lot width and 8,000 square feet of lot area for single family houses.

With 145 feet of lot width on Okemos Road and 0.56 acre (24,393.6 square feet) of lot area both parcels meet the minimum standards for both lot area and lot width for either duplexes or single family houses in the proposed RX zoning district, but do not meet the minimum standard for lot width and lot area of the current RR zoning district. The following table illustrates the minimum lot width and lot area requirements for the existing RR and proposed RX zoning districts:

ZONING DISTRICT	MINIMUM LOT AREA	MINIMUM LOT WIDTH
RR	40,000 sq. ft.	200 ft.
RX	11,000 sq. ft. (duplex) 8,000 sq. ft. (single family)	100 ft. (duplex) 65 ft. (single family)
PARCEL	LOT AREA	LOT WIDTH
5921 Okemos Rd.	24,393.6 sq. ft.	145 ft.
5929 Okemos Rd.	24,393.6 sq. ft.	145 ft.

**ZONING MAP**



A variance was granted in 1985 (ZBA #85-10-09-11) to divide the former parent parcel into two parcels that do not meet the minimum lot area and lot frontage standards of the RR zoning district, which makes the parcels eligible for development. The following conditions were placed on the variance approval:

- Require the developer to clean out the downstream end of the culvert, as well as create a ditch line through the property.
- Grant a drain easement to the Ingham County Drain Commissioner.
- Restrict development from placing fill material on the west side of the property, which would block drainage from the lots in the Sleepy Hollow subdivision.
- Require the developer to prepare a grading plan for the site which includes elevations for the properties to the west, and also supply the invert elevation on the culvert and spot elevations on the ditch line.
- Notify adjoining property owners when the grading plan is available for review.

### **Physical Features**

The site is currently undeveloped and is generally level, with elevations ranging from 853 feet above mean sea level near the northeastern corner of the site and gradually rising to 855 feet above mean sea level near the midpoint of the west property line, with a gradual decline to 853 feet above mean sea level at the southwest portion of the property.

The Raby Drain, an open (unenclosed) county drain, enters the property at the northeast corner of the southern parcel and flows southwest off the site. A 50 foot setback from open county drains is required, and is measured from the top of the bank on the side of the drain where a structure would be located or where grading activity would occur.

The site has no special designation on the Township Greenspace Plan. The Flood Insurance Rate Map indicates floodplain is not present on the site. The Township Wetland Map does not indicate the presence of wetlands on the site; however, a 21.11 acre state regulated wetland (Wetland #9-4A) is shown west of the site.

### **Streets & Traffic**

The site fronts on Okemos Road, which is a two-lane public road without curb and gutter designated as a Minor Arterial (between Central Park Drive and Lake Lansing Road) on the Street Setbacks and Service Drives Map in the zoning ordinance. A seven foot wide pedestrian pathway is located along the Okemos Road property frontage. The most recent (2017) traffic count information from the Ingham County Road Department (ICRD) for Okemos Road, between Haslett Road and Lake Lansing Road, showed a total of 7,240 vehicles in a 24 hour period.

The following table shows estimated traffic generation resulting from potential development of the subject property (two parcels) under the existing RR zoning. It estimates future traffic using data from the highest potential traffic generator allowed in the RR zoning district, which in this case is one single family house per parcel.

Existing RR zoning (2 parcels)	
Peak Hour trips	1.48 (a.m.) 1.98 (p.m.)
Weekday trips	18.88

The applicant submitted a trip generation analysis which estimates future vehicle trips that could be generated by development of the property with two duplex units. The Institute of Transportation Engineers (ITE) trip generation rates for Single Family-Detached Housing (Land Use Code 210) were selected as representing two duplexes (four single family units) because the ITE does not have a land use code for duplex units. The following table summarizes findings from the submitted trip generation analysis.

Description	Size	AM Peak Hour			PM Peak Hour			Weekday
		In	Out	Total	In	Out	Total	
Single Family Detached Housing, Code 210	4 Units	2	6	8	3	2	5	54

A traffic study is required for rezonings when the proposed district would permit uses that could generate more than 100 additional directional trips during the peak hour than the principal uses permitted under the current zoning. A peak hour of traffic is the hour of highest volume of traffic entering and exiting the site during the a.m. or p.m. hours. Based on the projected traffic volumes a traffic study was not required.

**Utilities**

Municipal water and sanitary sewer are available to serve the subject site. The location and capacity of utilities for any proposed development will be reviewed in detail by the Department of Public Works and Engineering at the time of a development submittal.

**Staff Analysis**

The applicant has requested the rezoning of approximately 1.12 acres (two parcels) from RR to RX. When evaluating a rezoning request, the Planning Commission should consider all uses permitted by right and by special use permit in the current and proposed zoning districts, as well as the reasons for rezoning listed on page two of the rezoning application (attached).

Development of the subject property under the current RR zoning is limited to two single family houses (one per parcel). As the two parcels proposed for rezoning do not currently meet the minimum standard for lot width (200 feet) of the current RR zoning district, and further divisions of either parcel would not meet the minimum standard for lot area of 40,000 square feet, a variance from the Zoning Board of Appeals would be required to further subdivide the properties.

Under the proposed RX zoning the two parcels could be subdivided through the land division process for single family residential lots. The subject property could likely be divided into four parcels, one split per property resulting in two new parcels, with a minimum 65 feet of lot frontage each. With the RX zoning district requirement of 100 feet of lot frontage for duplexes, the subject property (2 parcels with approximately 290 feet of frontage combined) could not be further subdivided for duplexes without a variance from the Zoning Board of Appeals.

### **Planning Commission Options**

The Planning Commission may recommend approval or denial of the request, or it may recommend a different zoning designation than proposed by the applicant to the Township Board. A resolution will be provided at a future meeting.

### **Attachments**

1. Rezoning application dated February 6, 2019 and received by the Township on February 8, 2019.
2. Trip generation analysis prepared by Traffic Engineering Associates, Inc., dated February 28, 2019 and received by the Township on March 1, 2019.
3. Rezoning criteria.

G:\Community Planning & Development\Planning\REZONINGS (REZ)\2019\REZ 19050 (G.S. Fedewa Builders)\REZ 19050.pc1.doc

**CHARTER TOWNSHIP OF MERIDIAN  
DEPARTMENT OF COMMUNITY PLANNING AND DEVELOPMENT  
5151 MARSH ROAD, OKEMOS, MI 48864  
PHONE: (517) 853-4560, FAX: (517) 853-4095**

**REZONING APPLICATION**

**Part I, II and III of this application must be completed. Failure to complete any portion of this form may result in the denial of your request.**

**Part I**

- A. Owner/Applicant G.S. Fedewa Builders  
Address of applicant 5570 Okemos Rd. East Lansing  
Telephone: Work (517)339-0020 Home \_\_\_\_\_  
Fax (517) 339-4022 Email fedewagr@gmail.com  
If there are multiple owners, list names and addresses of each and indicate ownership interest. Attach additional sheets if necessary. If the applicant is not the current owner of the subject property, the applicant must provide a copy of a purchase agreement or instrument indicating the owner is aware of and in agreement with the requested action.
- B. Applicant's Representative, Architect, Engineer or Planner responsible for request:  
Name / Contact Person \_\_\_\_\_  
Address \_\_\_\_\_  
Telephone: Work \_\_\_\_\_ Home \_\_\_\_\_  
Fax \_\_\_\_\_ Email \_\_\_\_\_
- C. Site address/location 5929 Okemos Rd. East Lansing MI. 48823 and 5921 Okemos Rd. East Lansing MI. 48823  
Legal description (Attach additional sheets if necessary) \_\_\_\_\_  
Parcel number 33-02-02-09-203-018 and 33-02-02-09-203-019 and Site acreage .56 and .56
- D. Current zoning RR Requested zoning BX
- E. The following support materials must be submitted with the application:
1. Nonrefundable fee.
  2. Evidence of fee or other ownership of the subject property.
  3. A rezoning traffic study prepared by a qualified traffic engineer based on the most current edition of the handbook entitled *Evaluating Traffic Impact Studies: A Recommended Practice for Michigan Communities*, published by the State Department of Transportation, is required for the following requests:
    - a. Rezoning when the proposed district would permit uses that could generate more than 100 additional directional trips during the peak hour than the principal uses permitted under the current zoning.
    - b. Rezoning having direct access to a principal or minor arterial street, unless the uses in the proposed zoning district would generate fewer peak hour trips than uses in the existing zoning district.  
(Information pertaining to the contents of the rezoning traffic study will be available in the Department of Community Planning and Development.)
  4. Other information deemed necessary to evaluate the application as specified by the Director of Community Planning and Development.

**Part II**

**REASONS FOR REZONING REQUEST**

**Respond only to the items which you intend to support with proof. Explain your position on the lines below, and attach supporting information to this form.**

A. Reasons why the present zoning is unreasonable:

- 1) There is an error in the boundaries of the Zoning Map, specifically: \_\_\_\_\_  
\_\_\_\_\_
- 2) The conditions of the surrounding area have changed in the following respects: \_\_\_\_\_  
The property directly across the street is zoned RC Multi Family.
- 3) The current zoning is inconsistent with the Township's Master Plan, explain:  
\_\_\_\_\_
- 4) The Township did not follow the procedures that are required by Michigan laws, when adopting the Zoning Ordinance, specifically: \_\_\_\_\_  
\_\_\_\_\_
- 5) The Township did not have a reasonable basis to support the current zoning classification at the time it was adopted; and the zoning has exempted the following legitimate uses from the area: The properties were divided to less than the required 40,000 sq ft. and do not have the required 200' of parcel frontage. The current zoning has exempted the properties from the building of duplexes.
- 6) The current zoning restrictions on the use of the property do not further the health safety or general welfare of the public, explain: \_\_\_\_\_  
The current zoning allows for chickens and goats to be held on the property The lots are too close to the neighboring properties for any type of livestock.

B. Reasons why the requested zoning is appropriate:

- 1) Requested rezoning is consistent with the Township's Master Plan, explain:  
The proposed change is consistent with the zoning plan within the Master Plan.
- 2) Requested rezoning is compatible with other existing and proposed uses surrounding the site, specifically:  
The two neighboring parcels are single family residential while the parcel across the street is zoned RC Multi family residential.
- 3) Requested rezoning would not result in significant adverse impacts on the natural environment, explain: \_\_\_\_\_
- 4) Requested rezoning would not result in significant adverse impacts on traffic circulation, water and sewer systems, education, recreation or other public services, explain:  
The two parcels have public water and sewer. The parcels are too small to create traffic issues.
- 5) Requested rezoning addresses a proven community need, specifically: \_\_\_\_\_  
This project addresses the need for affordable residential Ranch style homes.
- 6) Requested rezoning results in logical and orderly development in the Township, explain:  
The RR zoning code does not make sense in such a densely populated area, allowing duplexes would fit in with the natural character of the street.
- 7) Requested rezoning will result in better use of Township land, resources and properties and therefore more efficient expenditure of Township funds for public improvements and services, explain: \_\_\_\_\_

**Part III**

I (we) hereby grant permission for members of the Charter Township of Meridian's Boards and/or Commissions, Township staff member(s) and the Township's representatives or experts the right to enter onto the above described property (or as described in the attached information) in my (our) absence for the purpose of gathering information including but not limited to the taking and the use of photographs.

Yes     No    (Please check one)

By the signature(s) attached hereto, I (we) certify that the information provided within this application and accompanying documentation is, to the best of my (our) knowledge, true and accurate

*Jerry Fedewa*

Signature of Applicant

2/6/2019

Date

Jerry Fedewa

Type/Print Name

Fee: \$700.00

Received by/Date: *Justin Quagliata 2/8/19*

Jerry Fedewa  
Jerry Fedewa Homes Inc.  
5570 Okemos Road  
East Lansing, MI 48823

**Traffic Engineering  
Associates, Inc.**  
**517/627-6028 FAX: 517/627-6040**  
PO Box 100  
Saranac, Michigan 48881

February 28, 2019

Dear Mr. Fedewa:

Traffic Engineering Associates, Inc. (TEA) conducted a trip generation analysis to determine the approximate future vehicle trips which could be generated by the proposed residential developments located at 5921 and 5929 Okemos Road in Meridian Charter Township, Ingham County, Michigan.

### PROJECT DESCRIPTION

The proposed residential developments will consist of constructing two (2) residential duplex houses on the individual lots. The purpose of this study is to provide a trip generation for the proposed two (2) new residential duplex homes.

### TRAFFIC ANALYSIS

For this analysis, trip generation rates were derived from the ITE TRIP GENERATION MANUAL (10th edition). The manual does not have a land use code for duplex units; therefore, the ITE trip generation rates for Single-Family Detached Housing (Land Use Code 210), were selected as representing the two (2) duplexes, (4 single family units). The ITE description of Single-Family Detached Housing is as follows:

*Single-family detached housing includes all single-family detached homes on individual lots. A typical site is a suburban subdivision.*

It is projected that the proposed residential duplexes will generate 8 vehicle trips during the AM peak hour, 5 vehicle trips during the PM peak hour, and a 24-hour weekday total of 54 vehicle trips.

### Vehicle Trip Generation Summary

Description	Size	AM Peak Hour			PM Peak Hour			Weekday
		In	Out	Total	In	Out	Total	
Single-Family Detached Housing, Code 210	4 Units	2	6	8	3	2	5	54

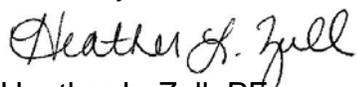


## FINDINGS

In accordance with the guidelines set forth in "Evaluating Traffic Impact Studies, A Recommended Practice for Michigan Communities," sponsored by the Tri-County Regional Planning Commission and the Michigan Department of Transportation, if a proposed site is expected to generate at least 100 directional trips during the peak hour or at least 750 trips during an average day, a traffic impact statement is required. If the traffic generated by the site is expected to be between 50 and 99 directional trips during a peak hour, a traffic impact assessment shall be required. Using the Meridian Charter Township traffic impact guidelines, neither a traffic assessment nor traffic impact statement would be required for this development based on projected volumes.

If you have any questions, please write or call.

Sincerely,



Heather L. Zull, PE



**Part II**

**REASONS FOR REZONING REQUEST**

**Respond only to the items which you intend to support with proof. Explain your position on the lines below, and attach supporting information to this form.**

A. Reasons why the present zoning is unreasonable:

- 1) There is an error in the boundaries of the Zoning Map, specifically: \_\_\_\_\_  
\_\_\_\_\_
- 2) The conditions of the surrounding area have changed in the following respects: \_\_\_\_\_  
\_\_\_\_\_
- 3) The current zoning is inconsistent with the Township's Master Plan, explain: \_\_\_\_\_  
\_\_\_\_\_
- 4) The Township did not follow the procedures that are required by Michigan laws, when adopting the Zoning Ordinance, specifically: \_\_\_\_\_  
\_\_\_\_\_
- 5) The Township did not have a reasonable basis to support the current zoning classification at the time it was adopted; and the zoning has exempted the following legitimate uses from the area: \_\_\_\_\_  
\_\_\_\_\_
- 6) The current zoning restrictions on the use of the property do not further the health safety or general welfare of the public, explain: \_\_\_\_\_  
\_\_\_\_\_

B. Reasons why the requested zoning is appropriate:

- 1) Requested rezoning is consistent with the Township's Master Plan, explain: \_\_\_\_\_  
\_\_\_\_\_
- 2) Requested rezoning is compatible with other existing and proposed uses surrounding the site, specifically: \_\_\_\_\_  
\_\_\_\_\_
- 3) Requested rezoning would not result in significant adverse impacts on the natural environment, explain: \_\_\_\_\_  
\_\_\_\_\_
- 4) Requested rezoning would not result in significant adverse impacts on traffic circulation, water and sewer systems, education, recreation or other public services, explain: \_\_\_\_\_  
\_\_\_\_\_
- 5) Requested rezoning addresses a proven community need, specifically: \_\_\_\_\_  
\_\_\_\_\_
- 6) Requested rezoning results in logical and orderly development in the Township, explain: \_\_\_\_\_  
\_\_\_\_\_
- 7) Requested rezoning will result in better use of Township land, resources and properties and therefore more efficient expenditure of Township funds for public improvements and services, explain: \_\_\_\_\_  
\_\_\_\_\_



**To:** Planning Commission  
**From:** Peter Menser, Principal Planner  
**Date:** April 4, 2019  
**Re:** **Zoning Amendment #19030 (Township Board), amend Section 86-2 and add Section 86-445 of the Code of Ordinances to establish the Commercial Medical Marihuana Facilities Overlay District.**

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The Planning Commission discussed Zoning Amendment #19030 at its last meeting on March 25, 2019. Based on a straw poll taken at the meeting there was general consensus to recommend approval of the proposed zoning amendment at the next meeting, subject to the following changes to the draft ordinance language:

- Elimination of Overlay Area #2 (Haslett Road/Okemos Road)
- Elimination of Overlay Area #6 (Jolly Road/Okemos Road)
- Revision to the arrangement of zoning districts/license types as depicted below:

<i>Facility type</i>	<i>Zoning District(s) allowed</i>
Grower	I (Industrial)
Processor	I (Industrial)
Provisioning Center	C-1, C-2, C-3 (Commercial)
Safety Compliance Facility	I (Industrial) and RP (Research and Office Park)
Secure Transporter	I (Industrial) and RP (Research and Office Park)

### **Planning Commission Options**

The Planning Commission may recommend approval as written, recommend approval of a revised version, or recommend denial of the proposed zoning amendment. A resolution to recommend approval is provided.

- **Motion to adopt the attached resolution recommending approval of Zoning Amendment #19030 with conditions.**

### **Attachments**

1. Resolution to recommend approval.
2. Revised draft ordinance language dated April 4, 2019

G:\Community Planning & Development\Planning\ZONING AMENDMENTS (ZA)\2019\ZA 19030 (Township Board)\Zoning Amendment 19030.pc5.docx

**RESOLUTION TO RECOMMEND APPROVAL**

**Zoning Amendment #19030  
Township Board**

**RESOLUTION**

At the regular meeting of the Planning Commission of the Charter Township of Meridian, Ingham County, Michigan, held at the Meridian Municipal Building, in said Township on the 8th day of April, 2019, at 7:00 p.m., Local Time.

PRESENT: \_\_\_\_\_  
\_\_\_\_\_

ABSENT: \_\_\_\_\_

The following resolution was offered by \_\_\_\_\_ and supported by \_\_\_\_\_.

WHEREAS, the Township Board, at its meeting on December 11, 2018 initiated the zoning amendment to amend Section 86-2 and add Section 86-445 of the Code of Ordinances to establish the Commercial Medical Marihuana Facilities Overlay District; and

WHEREAS, the proposed zoning amendment would establish four designated areas in the Township where commercial medical marihuana facilities can be located; and

WHEREAS, the proposed zoning amendment identifies the zoning districts in which each of the five types of commercial medical marihuana facilities can locate, which includes grower facilities in I (Industrial) zoning districts; processor facilities in I (Industrial) zoning districts; provisioning centers in C-1, C-2, and C-3 (Commercial) zoning districts; safety compliance facilities in I (Industrial) and RP (Research Park) zoning districts, and secure transporter facilities in I (Industrial) and RP (Research Park) zoning districts; and

WHEREAS, the Planning Commission held a public hearing on the proposed zoning amendment at its regular meeting on February 11, 2019 and reviewed staff material forwarded under cover memorandums dated February 5, 2019, February 22, 2019, March 8, 2019, and March 22, 2019; and

WHEREAS, in addition to a State license and Township permit, all types of commercial medical marihuana facilities would be subject to approval of a special use permit from the Township Board; and

WHEREAS, the four designated overlay areas identified for commercial medical marihuana facilities will minimize incompatibilities with existing surrounding land uses; and

WHEREAS, the proposed zoning amendment is consistent with the goal established in the 2019 Community Planning and Development department plan to complete ordinances for Commercial Medical Marihuana Facilities; and

WHEREAS, the proposed zoning amendment is consistent with Goal 3 of the 2017 Master Plan to enhance the viability of Township businesses.

**Zoning Amendment #19030 (Township Board)**

**Planning Commission (April 8, 2019)**

**Page 2**

NOW THEREFORE BE IT RESOLVED THE PLANNING COMMISSION OF THE CHARTER TOWNSHIP OF MERIDIAN hereby recommends approval of Zoning Amendment #19030, to amend Section 86-2 and add Section 86-445 of the Code of Ordinances to establish the Commercial Medical Marihuana Facilities Overlay District, subject to the following conditions:

1. The recommendation is in accordance with the revised draft ordinance language dated April 4, 2019.
2. Overlay Areas #2 and #6 are recommended for removal from the Commercial Medical Marihuana Facilities Overlay District Map.

ADOPTED: YEAS: \_\_\_\_\_

\_\_\_\_\_

NAYS: \_\_\_\_\_

STATE OF MICHIGAN )

) ss

COUNTY OF INGHAM )

I, the undersigned, the duly qualified and acting Chair of the Planning Commission of the Charter Township of Meridian, Ingham County, Michigan, DO HEREBY CERTIFY that the foregoing is a true and a complete copy of a resolution adopted at a regular meeting of the Planning Commission on the 8th day of April, 2019.

\_\_\_\_\_  
John Scott-Craig  
Planning Commission Chair

**DRAFT ORDINANCE  
COMMERCIAL MEDICAL MARIHUANA FACILITIES OVERLAY DISTRICT  
CHARTER TOWNSHIP OF MERIDIAN**

**Chapter 86: Zoning  
Article I: In General  
Section 86-2: Definitions**

1. “Commercial Medical Marihuana Facility” or “Facility” means one of the following:
  - a. “Provisioning Center,” as that term is defined in the Medical Marihuana Facilities Licensing Act, Public Act 281 of 2016 (“MMFLA”);
  - b. “Processor,” as that term is defined in the MMFLA;
  - c. “Secure Transporter,” as that term in the MMFLA;
  - d. “Grower,” including Class A, Class B and Class C, as those terms are defined in the MMFLA;
  - e. “Safety Compliance Facility,” as that term is defined in the MMFLA.
2. “Marihuana” means that term as defined in Section 7106 of the Michigan Public Health Code, 1978 PA 368, MCL 333.7106.
3. “Medical Marihuana” means that term as defined in MCL 333.26423.
4. “Patient” means a “registered qualifying patient” or a “visiting qualifying patient” as those terms are defined by MCL 333.26421, et seq.
5. “Permit” means a current and valid permit for a Commercial Medical Marihuana Facility issued under the Charter Township of Meridian Ordinance Authorizing and Permitting Commercial Medical Marihuana Facilities, Charter Township of Meridian Ordinance No. \_\_\_\_, which shall be granted to a Permit Holder only for and limited to a specific Permitted Premises and a specific Permitted Property. Said Permit shall be in addition to the Special Use Permit required to be obtained under this Zoning Ordinance.
6. “Person” means a natural person, company, partnership, profit or non-profit corporation, limited liability company, or any joint venture for a common purpose.

**Medical Marihuana draft ordinance**

**REVISED April 4, 2019**

**Page 2**

**Chapter 86: Zoning**

**Article IV: District Regulations**

**Division 4: Other Districts**

**Section 86-445 Commercial Medical Marihuana Facilities Overlay District**

(a) Applicability. The Commercial Medical Marihuana Facilities overlay district shall apply to all lots within the areas shown on Map (s) \_\_\_\_ (the "Overlay Areas"). All lots included in the overlay district shall be subject to the terms and conditions imposed in this section, in addition to the terms and conditions imposed by the zoning district where such lots may be located, any other applicable ordinance and the requirements of Section (Ordinance Authorizing and Permitting Commercial Medical Marihuana Facilities).

(b) Uses permitted by right. All uses permitted by right in the underlying zoning districts.

(c) Uses permitted by special use permit. All uses permitted by special use permit in the underlying zoning district and all types of Commercial Medical Marihuana Facilities subject to the number of available Permits allowed per Section (Ordinance Authorizing and Permitting Commercial Medical Marihuana Facilities).

(d) Uses not permitted. Any use not permitted in the underlying zoning district is not permitted in the Commercial Medical Marihuana Facilities overlay district.

(e) Permitted locations.

1. Grower Class A, Class B, or Class C in the I (Industrial) district.
2. Processor in the I (Industrial) district.
3. Provisioning Center in the C-1, C-2, or C-3 (Commercial) districts.
4. Safety Compliance Facility in the I (Industrial) district and RP (Research and Office Park) districts.
5. Secure Transporter in the I (Industrial) district and RP (Research and Office Park) districts.

(f) Application and departmental reviews

1. Application. The application for a special use permit shall be submitted to the Director of Community Planning and Development in accordance with Section 86-124.

**Medical Marihuana draft ordinance**

**REVISED April 4, 2019**

**Page 3**

2. Departmental reviews. The applicant's plan shall be reviewed by the Township Department of Community Planning and Development, the Township EMS/Fire Department, the Township Police Department, the Township Public Works/Engineering Department, the county drain commissioner, and the county road department or the state department of transportation, whichever road agency has jurisdiction over roads in the immediate vicinity, in order to ensure that public utilities, road, and other infrastructure systems are or will be adequate to support the proposed development.

(g) Review process. Upon determination that the application is complete, the Director of Community Planning and Development shall initiate a review process in accordance with Section 86-125 of this chapter, subject to all hearings and other provisions set forth therein, as applicable, except the final decision on the special use permit shall be made by the Township Board.

1. Planning Commission action. The Planning commission after holding a public hearing shall make a recommendation to the Township Board. In making a recommendation the Planning Commission shall follow the review criteria in Section 86-126 and may recommend conditions in accordance with Section 86-127.
2. Township Board action. Following review of the Planning Commission's recommendation and record, the Township Board may deny, approve, or approve with conditions an application for a special use permit. Prior to making a decision on a special use permit, the Township Board may hold a public hearing on the request. Notice of the public hearing shall be given in the same manner as outlined in § 86-65 of the Code of Ordinances.

(h) Amendments. Any amendments to an approved special use permit shall be in accordance with Section 86-129.



**To: Planning Commission**

**From: Peter Menser, Principal Planner**

**Date: April 3, 2019**

**Re: 2019 Planning Commission goals**

---

At its last meeting on March 25, 2019 the Planning Commission discussed the establishment of goals for 2019. The Planning Commission settled on the following items to include as goals:

1. Implementation of 2017 Master Plan.
  - a. Consider development of form-based code ordinance for Potential Intensity Change Areas (PICAs) and Grand River Avenue corridor.
  - b. Address the revisions to the Zoning Ordinance and Zoning Map identified in the Action Plan on Page 15 of the Master Plan.
2. Update the Mixed Use Planned Unit Development ordinance.
3. Identify training opportunities for new and current Planning Commission members.
4. Engage subject matter experts for presentations to the Planning Commission on policy-related topics of interest.
5. Complete a plan for the review and update of the Master Plan in 2020.
6. Revise the sign ordinance so it is content neutral.

The above goals will not preclude the Planning Commission from working on other projects; they simply provide a guide for activities for the year. The following motion is included to formally adopt the 2019 Planning Commission goals.

- **Motion to adopt the 2019 Planning Commission goals**

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# Supreme Court ruling on sign regulation has major implications for all local governments

The decision means many, if not all, sign regulations in Michigan will need to be reviewed and likely changed if the municipality wants to reduce legal risks.

June 29, 2015 - Author: [Brad Neumann \(/people/brad\\_neumann/\)](/people/brad_neumann/), [Michigan State University Extension \(/outreach/\)](/outreach/)

In the case *Reed et al. v. Town of Gilbert, Arizona, et al.* ([http://www.supremecourt.gov/opinions/14pdf/13-502\\_9olb.pdf](http://www.supremecourt.gov/opinions/14pdf/13-502_9olb.pdf)), (No. 13-502, June 18, 2015), the United States Supreme Court ruled 9-0, regulations that categorize signs based on the type of information they convey (e.g. temporary, political and ideological) and then apply different standards to each category are content-based regulations of speech and are not allowed under the First Amendment to the United States Constitution.

In this case, Gilbert, Arizona has sign regulations that prohibit the display of outdoor signs without a permit, but exempts 23 categories of signs, including the three relevant here:

- **Ideological Signs** are defined as signs “communicating a message or ideas” that do not fit in any other category and may be up to 20 square feet without placement or time restrictions.
- **Political Signs** are defined as signs “designed to influence the outcome of an election” and may be up to 32 square feet, but may only be displayed during an election season.
- **Temporary Directional Signs** are defined as signs directing the public to a church or other “qualifying event” and include greater restrictions: No more than four of the signs, limited to six square feet, may be on a single property at any time, and signs may be displayed no more than 12 hours before the “qualifying event” and 1 hour after.

Petitioners, Good News Community Church and its pastor, Clyde Reed, whose Sunday church services are held at various temporary locations in and near Gilbert, posted signs early each Saturday bearing the Church name and the time and location of the next service and did not remove the signs until around midday Sunday. The Church was cited for exceeding the time limits for displaying temporary directional signs and for failing to include an event date on the signs. Unable to reach an accommodation with the Town, petitioners filed suit, claiming that the sign regulations limited their freedom of speech. The United States District Court denied their motion for a preliminary injunction, and the Ninth United States Circuit affirmed, ultimately concluding that the sign categories (the three noted above) were content neutral.

Upon appeal, the United States Supreme Court held the sign provisions are content-based regulations of speech – the categories of temporary, political and ideological signs are based on their messages and different restrictions apply to each category. As such, the restrictions

depend entirely on the sign's communicative content and are unconstitutional.

Courts have long ruled that government cannot regulate the content of signs because doing so could violate the right to free speech contained in the First Amendment. In reviewing government regulations, the Supreme Court applies various 'tests' for the constitutionality of a regulation. When a regulation is challenged based on its free speech content, the Court applies the strict scrutiny test, which means the regulation must be for a compelling governmental interest and the regulation must be narrowly tailored to serve the governmental interest. In *Reed et al.*, the Town of Gilbert did not demonstrate that the differentiation between the various types of signs – temporary, political and ideological – furthered a compelling governmental interest. The Supreme Court wrote “The town cannot claim that placing strict limits on temporary directional signs is necessary to beautify the town when other types of signs create the same problem. Nor has it shown that temporary directional signs pose a greater threat to public safety than ideological or political signs.”

It is fairly common (although unconstitutional) for communities to have definitions and/or regulations that classify signs, based on the message being communicated, into categories such as those subject in this case. Typically, regulations will refer to 'open' signs or 'political' signs and have distinct standards for both. In order to reduce the chance of an adverse lawsuit, local governments will want to review their sign regulations with their municipal attorney very carefully to determine whether any regulation(s) in their ordinance(s) might be content-based. If the ordinance can be implemented without reading the message of the sign, then the regulations are content-neutral. That is what the Court says is minimally necessary. However, local governments must go further and also make sure the underlying governmental purposes of the regulations are compelling. The Town of Gilbert failed to prove to the satisfaction of the Supreme Court that the underlying governmental purposes of traffic safety and aesthetics are compelling. The Court did not say it was impossible to make such a showing, only that the Town had failed to do so in this case. The Court also said there were ample content-neutral ways of achieving traffic safety that would pass constitutional muster.

In reviewing local regulations, it will be helpful to refer to the [Michigan Sign Guidebook: The Local Planning & Regulation of Signs](#) ([http://www.scenicmichigan.org/guidebook\\_2011.html](http://www.scenicmichigan.org/guidebook_2011.html)) prepared by the [Planning & Zoning Center](#) (<http://www.pzcenter.msu.edu/>) at [Michigan State University](#) (<http://msu.edu/>) for [Scenic Michigan](#) (<http://www.scenicmichigan.org/>) (for a summary of the Michigan Sign Guidebook, see [Sign regulation guidebook helps communities find their way](#) ([http://www.msue.anr.msu.edu/news/sign\\_regulation\\_guidebook\\_helps\\_communities\\_find\\_their](http://www.msue.anr.msu.edu/news/sign_regulation_guidebook_helps_communities_find_their) [Michigan State University Extension](#) (<http://www.msue.anr.msu.edu/>) [land use educators](#) ([http://www.msue.anr.msu.edu/program/info/land\\_use\\_education\\_services](http://www.msue.anr.msu.edu/program/info/land_use_education_services)) are available to deliver training programs on sign regulation based on the Michigan Sign Guidebook.

# U.S. Supreme Court Ruling Impacts Sign Regulations

## Introduction

On June 18, 2015, the U.S. Supreme Court decided the case of *Reed v Town of Gilbert, AZ* and held the town's sign ordinance unconstitutional. In this case, the town regulated a church's temporary directional signs differently than other noncommercial signs (e.g., political signs and ideological signs). For example, while the town of Gilbert allowed non-profit event signs to be displayed for 12 hours prior to the event and one hour after the event, the town allowed political signs to be displayed for an unlimited length of time prior to an election and required to be removed 10 days after the election. The Supreme Court found that these types of distinctions that are based on the content of the sign favored certain types of signs (i.e., speech) and violated the First Amendment of the U.S. Constitution. An important rule from this case is: If you need to read the message on a sign to determine how it is regulated, then the regulation is content-based.

## How Are My Community's Sign Regulations Impacted?

*Reed* left many unanswered questions regarding a municipality's authority to regulate signs based on commercial content or off-premise content. However, it is clear that sign regulations must strive for as much content neutrality as possible and that signs should not be regulated based on the content of the message or the speaker. For example, many sign ordinances have different regulations for signs based on the content of the sign, such as: real estate signs, political signs, special event signs, garage sale signs, and gas station signs. Now that the Supreme Court has ruled against these types of distinctions, many communities are at risk of costly and unnecessary litigation.

## What Should My Community Be Doing Right Now?

In Michigan, most communities regulate signs in their zoning ordinances in accordance with the Michigan Zoning Enabling Act. However, some communities have a separate sign ordinance that is not included in its zoning ordinance. In either case, every community should take the following steps to address content neutrality in their sign regulations:

**Step 1: Conduct a Technical Audit of all Sign Regulations in your Ordinances.** Almost all communities have definitions and standards for signs based on the content of the message, including: construction signs, religious signs, garage sale signs, theater signs, time/temperature signs, help wanted signs, directional signs, special event signs, and the like. All communities should conduct a thorough technical audit of their sign regulations and identify any content-based provisions, i.e. provisions that regulate signs based on the message, the speaker, or an event.

**Step 2: Discuss Sign Regulations with your Municipal Attorney.** Because *Reed* impacts every sign ordinance in the U.S., your municipal attorney should advise you on how much content neutrality is required in your community's sign regulations and make officials aware of any legal risks. The legal community is aware of the implications (and uncertainty) created by the *Reed* case, and it is essential for you to engage the advice of your municipal attorney early in the review process. Your municipal attorney can also advise you on enforcing (or not enforcing) existing sign regulations that are legally questionable. Finally, your municipal attorney should review any proposed amendments to your sign regulations and inform you of potential risks.

**Step 3: Initiate and Adopt Amendments to your Sign Regulations.** After identifying content-based provisions in your local sign regulations and reviewing them with your municipal attorney, draft text revisions that will comply with the First Amendment and reflect your community's character. Communities may still regulate the non-content aspects of signs, including sign height, area, form, materials, separation, placement, lighting, frequency of message changes, moving parts, and portability. Sign regulations reflect a community's physical character and impacts the value of the highly visible commercial development (tax base) that fronts most major thoroughfares. Therefore, the sign regulations must clearly communicate the aesthetic standards of your community.

This publication was written by Patrick Sloan of McKenna Associates



Signs of the Good News Presbyterian Church placed temporary event signs throughout the town of Gilbert advertising its upcoming services. Because of the content of the message, the town regulated these temporary event signs differently than other non-commercial signs, such as political signs. A more appropriate regulation would have been to limit temporary signs based on content-neutral factors such as sign area, height, number per lot, setback from property line, and proper maintenance.

# Township Law *E-Letter*

## **Regulating Signs**



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*Townships often use zoning ordinances and police power ordinances for the regulation of signs. But sign regulation presents unique problems not encountered in the regulation of other land uses. In addition to the standard issues of authority and reasonableness inherent in any kind of land use regulation, signs raise issues of free speech and expression under the First Amendment. Here is a basic primer of what you need to know when regulating signs.*

### **Zoning Ordinance, Police Power Ordinance or Both?**

Two different kinds of ordinances are used by townships to regulate signs. Most of us are familiar with zoning ordinances, which regulate the location and character of land uses. Since signs are a kind of land use, they are subject to regulation under a zoning ordinance. The Michigan Zoning Enabling Act sets out the basic authority and process for adopting such ordinances.

The other kind of ordinance used to regulate signs is often called a “police power” ordinance or a “general” ordinance. These are regulatory ordinances that are designed to protect the public health, safety and general welfare. The authority to adopt such ordinances is implied under the Michigan Constitution, art 7, § 34, and expressly granted by MCL 41.181, sometimes referred to as the Township Ordinances Act, which provides that: “The township board ... may adopt ordinances regulating the public health, safety, and general welfare of persons and property...”

Many townships use zoning regulations to control signs. Such elements as size, height, location and setback are familiar zoning markers, so a zoning ordinance generally fits the regulation of signs. The problem with zoning ordinance regulation of signs, however, is that they generally cannot prohibit existing uses because they are “prior nonconforming uses.” So once a sign is established, it can be difficult or impossible to ever remove the sign under a zoning ordinance. Almost everyone knows of an old sign that has persisted for years, even as the underlying users of the adjacent buildings have come and gone.

Police power ordinances are not limited by a *per se* requirement to allow the continuation of prior nonconforming uses. Within the limits of reasonableness, it is possible for a police power ordinance to remove signs over time or after a reasonable time. This is sometimes referred to as the “amortization” of the sign, to allow the owner to make a reasonable return on his investment in the sign before it must be removed or altered to meet current regulations.

A number of townships have found that, to use their legal authority to its fullest, it is prudent to regulate signs under both a zoning ordinance and a police power ordinance. Future signs are best regulated under zoning, but existing signs require a police power ordinance so that the township has the option to remove existing signs when necessary. By maintaining both kinds of ordinances, your Township will be in the best position to address all the problems that signs can present.

### **Commercial On-Site Signs**

Many signs are secondary uses that identify the business or activity that takes place on a particular parcel. These are referred to as “on-site” signs. Such signs can serve many purposes, such as advertising the business on the site, listing current special offers or prices of items sold on site, and directing patrons to particular areas of the property for particular items, to name some common purposes.

Typically, the sizes, numbers and locations of on-site commercial signs permitted in an ordinance will be sufficient to allow the reasonable use of signs for these purposes. In practice, townships have a wide variation in what they will allow for such on-site commercial signs. Some townships have very restrictive sign requirements, and others are more permissive. For the most part, the courts uphold the judgment made by townships in the regulation of such on-site commercial signs, unless a landowner demonstrates that the regulations unreasonably restrict the use of the property, which is a difficult burden for the landowner.

### **Commercial Billboards**

When commercial signs are located on a different property than the business to which they pertain, they are referred to as “off-site” signs or billboards. The same general principles apply to billboards as to on-site signs, and there is likewise a range of regulation by townships.

However, when billboards are located adjacent to interstate highways, freeways or primary highways, their regulation becomes subject to state law, the Highway Advertising Act, which (with some exceptions) limits township regulation of such billboards. The Highway Advertising Act sets standard requirements for the size, lighting and spacing of such billboards. A township must carefully determine whether its proposed regulation of such billboards is authorized by the terms of the Act.

### **First Amendment Considerations**

Many signs communicate non-commercial messages, including political and religious messages. The regulation of these signs presents special issues under the First Amendment.

The first concern is whether such regulations are “content-neutral.” If the township’s ordinance requirements vary depending upon the message that a sign conveys, that raises a serious red flag.

But “content-neutrality” reflects a much more subtle concept than simply permitting some messages and prohibiting others (which is clearly unlawful, of course). As that concept is now understood by the courts, if an official must read a sign to determine whether it is permitted or not, then the regulations are not content-neutral.

For example, in a case just decided by the US Supreme Court this month, a municipality had different regulations for different non-profit signs, depending on the type of information they convey, such as directional signs (directing people to a group’s meetings), ideological signs (expressing particular opinions) and political signs (advocating a vote for a candidate or question). The sign ordinance in question treated temporary directional signs less favorably (in terms of size, location, duration, etc.) than political signs and ideological signs. Distinguishing between these types of signs clearly required that they be read, so the distinctions made between these types of signs were not “content-neutral,” even though they were not directed at particular messages. *Reed v Gilbert, US Supreme Court (June 18, 2015).*

If a regulation is determined not to be content-neutral, then a court will apply “strict scrutiny” to whether the regulation is reasonable, and the burden will be on the township to defend its validity. For such regulations to be found valid, the township must demonstrate both (1) that the regulation is designed to achieve a compelling governmental interest and (2) that the regulations are narrowly tailored to achieve that interest.

Although many significant public interests may justify the regulation of signs in general (traffic and pedestrian safety, visual blight, etc), it will be extremely challenging for a township to demonstrate that those interests (which possibly exist for all signs) can justify special regulation of certain non-commercial signs, but not others. In addition, by broadly restricting a vast array of signs, it will be difficult to demonstrate that the ordinance contains sufficiently “narrowly tailored” regulation.

### **Conclusion**

Many townships currently use regulations that are not “content-neutral” as defined by the Supreme Court. Following the *Reed v Gilbert* decision, townships would be well-advised to review their sign ordinances to assure that they meet “content-neutrality” requirements, identify compelling interests that are advanced by particular strict regulations, and attempt to tailor those regulations as narrowly as possible.

-- **Bill Fahey**

*Fahey Schultz Burzych Rhodes PLC, Your Township Attorneys, is a Michigan law firm specializing in the representation of Michigan townships. Our lawyers have more than 150 years of experience in township law, and have represented more than 150 townships across the state of Michigan. This publication is intended for our clients and friends. This communication highlights specific areas of law, and is not legal advice. The reader should consult an attorney to determine how the information applies to any specific situation.*



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# SIGNS, SIGNS, EVERYWHERE A SIGN



## Supreme Court Ruling Questions Answered

DO YOU KNOW  
IF THE SIGN  
REGULATIONS IN  
YOUR COMMUNITY  
ARE CONTENT-  
NEUTRAL AND  
COMPLIANT  
WITH THE FIRST  
AMENDMENT?  
**FIND OUT NOW.**

- 1 The U.S. Supreme Court's unanimous decision in *Reed v. Gilbert* impacts almost every sign ordinance in the U.S. Specifically, forms of noncommercial speech cannot be regulated differently based on the content of the sign's message.
- 2 The Supreme Court said: *"In other words, an innocuous justification cannot transform a facially content-based law into one that is content-neutral."* Communities must review their sign regulations immediately and identify "innocuous justifications" that favor certain types of signs. Because many types of signs are noncontroversial and/or exempt from permitting requirements, they are often ignored when evaluating the sign ordinance. While amendments may be necessary, communities can craft content-neutral standards while still achieving the purpose of their sign regulations.
- 3 Looking ahead, emerging LED technology has allowed better control of brightness and frequency of message changes. While many communities prohibit illuminated signs and changeable message signs based on fears and negative experiences, communities should study the latest technology and best practices to determine if there are suitable regulations it can implement while still maintaining their character.

**McKenna**  
ASSOCIATES

DALTON  
TOMICH



INTERNATIONAL SIGN ASSOCIATION

### RESOURCES (Future editions may be published after *Reed v. Gilbert*)

*Michigan Sign Guidebook*, Scenic Michigan, December 2011

*Street Graphics and the Law*, American Planning Association, PAS Report 580, Fourth Edition (published after *Reed v. Gilbert*)

International Sign Association (ISA) "[Resources for Local Officials](http://www.signs.org/GovernmentRelations/ResourcesforLocalOfficials.aspx)" website, with examples of sign regulations including nighttime brightness levels for Electronic Message Centers (EMCs): [www.signs.org/GovernmentRelations/ResourcesforLocalOfficials.aspx](http://www.signs.org/GovernmentRelations/ResourcesforLocalOfficials.aspx)

*Best Practices in Regulating Temporary Signs*, Signage Foundation, Inc., 2015:

[www.thesignagefoundation.org/Portals/0/Best\\_Practices\\_in\\_Regulating\\_Temporary\\_Signs.pdf](http://www.thesignagefoundation.org/Portals/0/Best_Practices_in_Regulating_Temporary_Signs.pdf)

*A Framework for On-Premise Sign Regulations*, Signage Foundation, Inc., March 2009: [www.thesignagefoundation.org/Portals/0/OnPremiseSignRegulations.pdf](http://www.thesignagefoundation.org/Portals/0/OnPremiseSignRegulations.pdf)

*Model On-Premise Sign Code*, United States Sign Council (USSC), 2011: [www.usscfoundation.org/USSCModelOn-PremiseSignCode.pdf](http://www.usscfoundation.org/USSCModelOn-PremiseSignCode.pdf)



## **Drafting and Enforcing Sign Codes after *Reed v Town of Gilbert***

The U.S. Supreme Court's decision in *Reed v Town of Gilbert* on June 18, 2015 is, undoubtedly, the most definitive and far-reaching statement that the Court has ever made regarding day-to-day regulation of signs. While the sign code provisions challenged in *Reed* involved only the regulation of temporary non-commercial signs, the Court's 6-3 majority decision, authored by Justice Clarence Thomas, applies to the regulation of *all* signs: permanent signs as well as temporary signs, business signs as well as residential signs, and to both commercial and non-commercial signs. If you're wondering "what about onsite vs. offsite signs?" - more on that later.

The rules that Justice Thomas announced in *Reed* could not be more straight-forward. A sign regulation that "on its face" considers the message on a sign to determine how it will be regulated is content-based. Justice Thomas emphasized that if a sign regulation is content-based "on its face" it does not matter that government did not intend to restrict speech or to favor some category of speech for benign reasons. He wrote: "In other words, an innocuous justification cannot transform a facially content-based law into one that is content-neutral." Further, a sign regulation that is facially content-neutral, if justified by – or that has a purpose related to – the message on a sign, is also a content-based regulation. For example, a code provision that allowed more lawn signs between mid-August and mid-November would be facially content-neutral but might be challenged as being justified by or have a purpose related to allowing "election campaign" messages.

Whether content-based "on its face" or content-neutral but justified in relation to content, Justice Thomas specified that the regulation is presumed to be unconstitutional and will be invalidated unless government can prove that the regulation is narrowly tailored to serve a compelling governmental interest. This is known as the "strict scrutiny" test and few, if any, regulations survive strict scrutiny. This may be particularly true in regards to sign regulations given that a number of federal courts have previously ruled that aesthetics and traffic safety, the "normal" governmental interests supporting sign regulations, are not "compelling interests."

### **Every Sign Code Should Be Scrutinized**

Justice Thomas's opinion calls into question almost every sign code in this country: few, if any, codes have no content-based provisions under the rules announced in *Reed*. For example, almost all codes contain content-based exemptions from permit requirements for house nameplates, real estate signs, political and/or election signs, garage sale signs, "holiday displays," etc. Almost all codes also categorize temporary signs by content, and then regulate them differently; for example, a "real estate" sign can be bigger and remain longer than a "garage sale" sign, or the code allows the display of more "election" signs than "ideological" or "personal" signs but the "election" signs must be removed "x" days after the election while the "personal" or "ideological" signs can remain indefinitely.

Many sign codes also have content-based provisions for permanent signs. Because the *Reed* rules consider "speaker-based" provisions to be content-based, differing treatment of signs for "Educational Uses" vs. "Institutional Uses" vs. "Religious Institutions" would be subject to strict scrutiny. The strict



scrutiny test would also apply for differing treatment of signs for “gas stations” vs. “banks” vs. “movie theaters.”

*Reed* does not, however, cast doubt on the content-neutral “time, place, or manner” regulations that are the mainstay of almost all sign codes, provided they are not justified by or have a purpose related to the message on the sign. Justice Thomas acknowledged that point, noting that the code at issue in *Reed* “regulates many aspects of signs that have nothing to do with a sign’s message: size, building materials, lighting, moving parts and portability.” Justice Alito’s concurring opinion, joined by Justices Kennedy and Sotomayor, went further.

While disclaiming he was providing “anything like a comprehensive list,” Justice Alito noted “some rules that would not be content based.” These included rules regulating the size and location of signs, including distinguishing between building and free-standing signs; “distinguishing between lighted and unlighted signs;” “distinguishing between signs with fixed messages and electronic signs with messages that change;” distinguishing “between the placement of signs on private and public property” and “between the placement of signs on commercial and residential property;” and rules “restricting the total number of signs allowed per mile of roadway.”

But Justice Alito also approved of two rules that seem at odds with Justice Thomas’s “on its face” language. Alito claimed that rules “distinguishing between on-premises and off-premises signs” and rules “imposing time restrictions on signs advertising a one-time event” would be content-neutral. But rules regarding “signs advertising a one-time event” clearly are facially content-based, as Justice Kagan noted in her opinion concurring in the judgment, and the same claim could be made regarding the onsite/offsite distinction. Further, neither Justice Thomas nor Justice Alito discussed how courts should treat codes that distinguish between commercial and non-commercial signs, a point raised by Justice Breyer in his concurring opinion. Thus, it seems clear that the lower federal courts will soon face claims that codes that differentiate between commercial and non-commercial signs or that regulate on-site and off-site signs differently are content based and subject to strict scrutiny. Stay-tuned!

Keep in mind, however, that even content-neutral “time, place or manner” sign regulations are subject to intermediate judicial scrutiny rather than the deferential “rational basis” scrutiny applied to regulations that do not implicate constitutional rights such as freedom of expression or religion. Intermediate scrutiny requires that government demonstrate that a sign regulation is narrowly tailored to serve a substantial government interest and leave “ample alternative avenues of communication.” Because intermediate scrutiny requires only a “substantial,” rather than a “compelling,” government interest, courts are more likely to find that aesthetics and traffic safety meet that standard. That said, courts have struck down a number of content-neutral sign code provisions because the regulations were not “narrowly tailored” to achieve their claimed aesthetic or safety goals.

### **Cities Must Respond**

So...what’s a city to do after *Reed*? Some cities are enacting moratoria on sign regulation while they try to figure that out. A court would likely view with disfavor a total moratorium on issuing *any* sign permits (or, worse yet, displaying any new signs) as an unconstitutional prior restraint on speech. In



contrast, a moratorium of short duration – certainly no more than 30 days – targeted at permits issued under code provisions that are questionable after *Reed* is far more likely to be upheld. Cities are also well-advised to suspend enforcement of code provisions – particularly regulation of temporary signs – that are questionable after *Reed*. Obviously, however, *all* sign code structural provisions directly related to public safety should continue to be enforced.

As we all know, drafting a fair and effective sign code that appropriately balances a community's interests in allowing both residents and businesses to use signs to meet their communication needs while achieving the community's interests in maintaining property values and achieving aesthetics and traffic safety goals is no easy task. Trying to do that during a short moratorium is even harder. But it is certainly not impossible.

### **Opportunities to Improve Your Sign Code Post-*Reed***

**1. Remove from the sign code all references to the content of a sign other than the few examples directly related to public safety noted in Justice Thomas's opinion.** Most of these content-based provisions likely will relate to temporary signs. Rather than referring to “real estate” or “political” or “garage sale” signs, your code should treat these all as “yard” signs or “residential district” signs. You then regulate their number, size, location, construction and amount of time they may be displayed, keeping in mind how your residents want to use such signs. You would use the same approach for temporary signs in business districts: replace references to “Grand Opening” or “Special Sale” signs with “temporary business sign” and regulate their number, size, location, construction and amount of time they may be displayed based on business needs for such signs.

**2. All the provisions in your code that refer to number, area, structure, location and lighting of permanent signs are content-neutral and unaffected by *Reed*.** If your code does have some content-based provisions for permanent signs, either by specifying content that must (or must not) be on a sign or because you distinguish among uses (e.g., “gas-station signs”), those provisions will be subject to strict scrutiny if challenged. None of these content-based provisions should be retained unless public safety would be so threatened by removal that the provision would survive strict scrutiny. Permanent signs should be regulated in a content-neutral manner with regulations distinguished not by type of use (because that would be “speaker-based”) but by either zoning districts or “character” districts or by reference to street characteristics such as number of lanes or speed-limit. The [International Sign Association](#) has a number of resources that can help your community revise your sign code based on the latest research, sign industry expertise, and sign-user perspectives.

**3. If your sign code does not have a severability clause and a substitution clause they should be added.** A severability clause provides that if any specific language or provision in the code is found to be unconstitutional, it is the intent of the city council that the rest of the code remain valid. For example: “If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word in this code is declared invalid, such invalidity shall not affect the validity or enforceability of the remaining portions of the code.” A substitution clause allows a non-commercial message to be displayed on *any* sign. While *Reed* did not discuss the commercial/non-commercial distinction, prior U.S. Supreme Court cases established that commercial speech should not be favored over non-commercial speech. A



substitution clause thus can safeguard you against liability that could result from mistakenly doing just that by prohibiting the display of a non-commercial message or citing it as a code violation. For example: “Signs containing noncommercial speech are permitted anywhere that advertising or business signs are permitted, subject to the same regulations applicable to such signs.”

**4. Understand that *Reed* has left several questions unanswered.** As previously noted, treatment of the onsite/offsite and commercial/non-commercial distinctions remains uncertain. *Reed* also failed to provide an answer to how we provide for the public’s desire for more signage during election campaigns in a wholly content-neutral manner. We also don’t know what, if any, content-based regulations might survive strict scrutiny. In light of these uncertainties, arguably the best course for cities is to err on the side of allowing for less restrictive, rather than more restrictive, sign regulations until the courts provide more guidance on the above questions and others that are certain to be raised.

*Professor Alan Weinstein holds a joint faculty appointment at Cleveland State University’s Cleveland-Marshall College of Law and Maxine Goodman Levin College of Urban Affairs and also serves as Director of the Colleges’ Law & Public Policy Program. Professor Weinstein is a nationally-recognized expert on planning law who lectures frequently at planning and law conferences and has over eighty publications, including books, book-chapters, treatise revisions and law journal articles. Professor Weinstein has extensive practice and research experience with First Amendment issues, particularly in the land use context. He has served as Chair of the Sub-committee on Land Use & the First Amendment in the American Bar Association’s (ABA) Section of State & Local Government Law and has extensive scholarly and practice experience with land-use regulation that raise First Amendment issues due to their effect on religious institutions, adult entertainment businesses, and signs, billboards, or newsracks.*

