

# Dexter Downtown Development Authority

August 20, 2015 < > 7:30 AM

**Dexter Senior Center**  
7720 Ann Arbor Street  
Dexter, MI 48130

## MINUTES

1. Call to Order: Called to order at 7:30 on August 20, 2015 by Vice-Chairman Doug Finn in the absence of the Chairman.
  
2. Roll Call
 

Becker, Patrick	Bellas, Rich	Brouwer, Steve-ab
Covert, Tom-ab	Darnell, Don	Finn, Doug
Jones, Carol	Keough, Shawn-arr 7:31	Model, Fred
O'Haver, Dan-ab	Schmid, Fred-arr 7:33	Willis, Randy

Also in attendance: Courtney Nicholls, City Manager; Pat Greve, Waste Management; Brian Tomazic, EnviroWirx; and media.
  
3. Approval of Minutes from the Regular June 18, 2015 Meeting:  
*Motion Darnell; support Willis to approve the regular meeting minutes of June 18, 2015 as presented. Unanimous voice vote approval with Brouwer, Covert, Keough, O'Haver, and Schmid absent.*
  
4. Approval of Agenda:  
*Motion Darnell; support Model to approve the agendas presented. Unanimous voice vote approval with Brouwer, Covert, Keough, O'Haver and Schmid absent.*
  
5. Pre-arranged Audience Participation:
  - a) Brian Tomazic, representative with EnviroWirx regarding in-ground trash containers. *Mr. Tomazic explained the Deep Waste trash container as an alternative to an enclosed dumpster style of container near the Encore Theatre. Discussion followed.*
  
6. Non-Arranged Citizen Participation:  
*None*
  
7. Treasurer's Report:
  - a) August Invoices: Invoice from Scott Munzel for May Attorney fees in the amount of \$5000; invoice from Scott Munzel for June Attorney fees in the amount of \$6,799; and invoice from Todd's Services for Brick Paver

Project in the amount of \$13,928 which includes the 10% retainage for a total of \$25,727.

*Motion Keough; support Darnell to pay the August invoices in the amount of \$25,727.*

*Ayes: Becker, Bellas, Darnell, Finn, Jones, Keough, Model, Schmid and Willis.*

*Nays: None*

*Absent: Brouwer, Covert and O'Haver*

*Motion carries*

b) Budget Amendment

*Motion Schmid; support Darnell to approve the budget amendment in the amount of \$8300.*

*Ayes: Becker, Bellas, Darnell, Finn, Jones, Keough, Model, Schmid and Willis.*

*Nays: None*

*Absent: Brouwer, Covert and O'Haver*

*Motion carries*

c) Approval of August 2015 Treasurer's Reports

*Motion Schmid; support Model to approve the Treasurer's Report as presented.*

*Ayes: Becker, Bellas, Darnell, Finn, Jones, Keough, Model, Schmid and Willis.*

*Nays: None*

*Absent: Brouwer, Covert and O'Haver*

*Motion carries*

d) Updated Budget Forecast

8. Correspondence / Communications:

a) 2015 Downtown Development Refunding Bonds

9. Action Items:

a) Election of Officers – Action to elect a Chair, Vice-Chair, Treasurer and Secretary.

*Request to table action until September Meeting.*

b) Retail Market Study – Discussion and possible action to recommend awarding a contract for a Retail Market Study.

*Motion Keough; support Darnell to award a contract for the Retail Market Study to the firm of Chuck Eckenstahler & Fanning Howey in an amount not to exceed \$10,950 and subject to the Dexter Area Chamber of Commerce obtaining the grant for the project.*

*Ayes: Becker, Bellas, Darnell, Finn, Jones, Keough, Model, Schmid and Willis.*

*Nays: None*

*Absent: Brouwer, Covert and O'Haver*

*Motion carries*

#### 10. Discussion Updates:

##### a) Downtown Redevelopment RFQ

*Discussion followed with the suggestion of keeping the same committee for the interviewing process. Mr. Covert provided questions to consider during the interview and these were determined to be good questions to ask in the interviewing process.*

#### 11. City Mayor and Staff Reports

##### a) Mayor – Shawn Keough

- *We are in the midst of the Plein Air Event and wrapped up a pretty successful Dexter Daze. Fred S mentioned that a lot of people asked about parking and possibly using the grass areas on Broad Street.*
- *Will be starting street improvements around town – in Huron Farms, in Westridge, and on Hudson and Grand Streets.*
- *On this past Tuesday, there were 40 people from the Michigan Trust Fund – MDNR and area counties in Dexter to view Mill Creek Park and show off the town. The Dexter Dairy Queen provided refreshments.*
- *Met with representatives from DTE about the sub-station decommission. We had asked for payments to be made over 15 years and DTE has asked for payment of 5 years. DTE will take care of the environmental concerns and have said that the building will come down. Have a better idea of the amount of property DTE will need in the Industrial Park.*

#### 12. Chairman's Report:

Items for September 17, 2015 Agenda –

- Election of Officers

#### 13. Non-Arranged Citizen Participation:

*None*

14. Adjournment

*Motion Willis; support Bellas to adjourn the meeting. Unanimous voice vote approval with Brouwer, Covert, Jones and O'Haver absent.*

Respectfully submitted,  
Carol Jones  
Secretary

## Memo

**To:** Dexter DDA  
**From:** Thomas Covert, DDA Treasurer and Marie Sherry, City Treasurer  
**Date:** September 9, 2015  
**Re:** Treasurer's Report – September 2015 Meeting

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### Invoice Approval Notes

- Scott E. Munzel, P.C.; Dexter Wellness Center Attorney Fees: \$6,201.50
- Combined total due for all invoices is \$6,201.50

### Cash Status

#### DDA Cash Balances Report 8-31-2015

Fund	Account Name	General Ledger Balance	Notes
248 - DDA General	TCF Pooled Account	\$ -	
394 - DDA Debt	TCF Pooled Account	\$ -	
	<b>Total DDA Pooled Checking</b>	<b>\$ -</b>	
248 - DDA General	TCF Money Market Account	\$ 18,927.57	
394 - DDA Debt	TCF Money Market Account	\$ -	
	<b>Total DDA Pooled Savings</b>	<b>\$ 18,927.57</b>	
248 - DDA General	ONB Money Market Account	\$ 202,540.33	
394 - DDA Debt	ONB Money Market Account	\$ -	
	<b>Total DDA Pooled Savings</b>	<b>\$ 202,540.33</b>	
248 - DDA General	Ann Arbor State Bank	\$ 250,000.00	.65% Renews 12/10/2015
	<b>Total Non-Pooled</b>	<b>\$ 250,000.00</b>	
Total General Cash		\$ 471,467.90	
Total Debt Cash		\$ -	
		<b>\$ 471,467.90</b>	
Month End Cash		\$ 471,467.90	
Projected FY 15/16 Revenue All Funds		\$ 531,758.77	
Projected FY 15/16 Expenditures All Funds		\$ (667,170.17)	
Wellness Center Set Aside		\$ (224,904.00)	Added set aside for FY 2015-2016
<b>Projected Year End Cash</b>		<b>\$ 111,152.50</b>	

**Budget FY 14/15**

Following are the Fiscal Year 2015-2016 Revenue and Expenditure Reports through August 31st.

09/09/2015 REVENUE AND EXPENDITURE REPORT FOR CITY OF DEXTER						
PERIOD ENDING 08/31/2015						
% Fiscal Year Completed: 16.94						
GL NUMBER	DESCRIPTION	2015-16	2015-16	YTD BALANCE	AVAILABLE	% BDGT USED
		ORIGINAL BUDGET	AMENDED BUDGET	NORMAL (ABNORMAL) 08/31/2015	NORMAL (ABNORMAL) BALANCE	
<b>Fund 248 - DOWNTOWN DEVELOPMENT AUTHORITY</b>						
<b>Revenues</b>						
Dept 000-ASSETS, LIABILITIES & REVENUE						
248-000-415.000	TAX CAPTURE REVENUE	287,500.00	287,500.00	44,022.50	243,477.50	15.31
248-000-574.001	PERSONAL PROPERTY TAX REIMBURSEMENT	5,300.00	5,300.00	0.00	5,300.00	0.00
248-000-665.000	INTEREST EARNED	500.00	500.00	10.04	489.96	2.01
248-000-695.494	TR IN DDA PROJECT FUND 494	186,500.00	186,500.00	186,201.83	298.17	99.84
<b>Total Dept 000-ASSETS, LIABILITIES &amp; REVENUE</b>		<b>479,800.00</b>	<b>479,800.00</b>	<b>230,234.37</b>	<b>249,565.63</b>	<b>47.99</b>
<b>TOTAL Revenues</b>		<b>479,800.00</b>	<b>479,800.00</b>	<b>230,234.37</b>	<b>249,565.63</b>	<b>47.99</b>
<b>Expenditures</b>						
Dept 248-ADMINISTRATION						
248-248-802.000	PROFESSIONAL SERVICES	5,000.00	5,000.00	0.00	5,000.00	0.00
248-248-803.000	CONTRACTED SERVICES	1,700.00	1,700.00	0.00	1,700.00	0.00
248-248-810.000	ATTORNEY FEES	15,000.00	15,000.00	5,000.00	10,000.00	33.33
248-248-880.000	DOWNTOWN EVENTS	500.00	500.00	500.00	0.00	100.00
248-248-957.002	DDA CAPTURE REFUNDS	500.00	500.00	0.00	500.00	0.00
<b>Total Dept 248-ADMINISTRATION</b>		<b>22,700.00</b>	<b>22,700.00</b>	<b>5,500.00</b>	<b>17,200.00</b>	<b>24.23</b>
Dept 442-DOWNTOWN PUBLIC WORKS						
248-442-803.015	CITY MAINTENANCE	5,000.00	5,000.00	0.00	5,000.00	0.00
248-442-970.000	CONTRACTED CAPITAL IMPROVEMENTS	15,900.00	15,900.00	13,928.00	1,972.00	87.60
<b>Total Dept 442-DOWNTOWN PUBLIC WORKS</b>		<b>20,900.00</b>	<b>20,900.00</b>	<b>13,928.00</b>	<b>6,972.00</b>	<b>66.64</b>
Dept 901-CAPITAL IMPROVEMENTS						
248-901-972.001	PURCHASE OF HOUSE	20,000.00	20,000.00	0.00	20,000.00	0.00
248-901-972.002	DTE SUBSTATION MOVE	25,000.00	25,000.00	0.00	25,000.00	0.00
248-901-972.004	3045 BROAD STREET REDEVELOPMENT	25,000.00	25,000.00	0.00	25,000.00	0.00
<b>Total Dept 901-CAPITAL IMPROVEMENTS</b>		<b>70,000.00</b>	<b>70,000.00</b>	<b>0.00</b>	<b>70,000.00</b>	<b>0.00</b>
Dept 965-TRANSFERS OUT - CONTROL						
248-965-999.394	TR OUT FOR BOND PAYMENTS - 394	282,200.00	282,200.00	0.00	282,200.00	0.00
<b>Total Dept 965-TRANSFERS OUT - CONTROL</b>		<b>282,200.00</b>	<b>282,200.00</b>	<b>0.00</b>	<b>282,200.00</b>	<b>0.00</b>
<b>TOTAL Expenditures</b>		<b>395,800.00</b>	<b>395,800.00</b>	<b>19,428.00</b>	<b>376,372.00</b>	<b>4.91</b>
<b>Fund 248 - DOWNTOWN DEVELOPMENT AUTHORITY:</b>						
<b>TOTAL REVENUES</b>		<b>479,800.00</b>	<b>479,800.00</b>	<b>230,234.37</b>	<b>249,565.63</b>	<b>47.99</b>
<b>TOTAL EXPENDITURES</b>		<b>395,800.00</b>	<b>395,800.00</b>	<b>19,428.00</b>	<b>376,372.00</b>	<b>4.91</b>
<b>NET OF REVENUES &amp; EXPENDITURES</b>		<b>84,000.00</b>	<b>84,000.00</b>	<b>210,806.37</b>	<b>(126,806.37)</b>	<b>250.96</b>

Fund 394 - DDA DEBT FUND						
Revenues						
Dept 000-ASSETS, LIABILITIES & REVENUE						
394-000-695.248	TRANSFER IN FROM DDA FUND 248	282,200.00	282,200.00	0.00	282,200.00	0.00
Total Dept 000-ASSETS, LIABILITIES & REVENUE		282,200.00	282,200.00	0.00	282,200.00	0.00
TOTAL Revenues						
		282,200.00	282,200.00	0.00	282,200.00	0.00
Expenditures						
Dept 850-LONG-TERM DEBT						
394-850-992.000	BOND FEES	1,000.00	1,000.00	0.00	1,000.00	0.00
394-850-997.003	DDA 2008 TAXABLE BOND (\$1.6M)	80,700.00	89,000.00	0.00	89,000.00	0.00
394-850-997.004	DDA 2008 BOND (\$2+M)	117,500.00	117,500.00	0.00	117,500.00	0.00
394-850-997.005	2011 REFUNDING BOND (\$620K)	83,000.00	83,000.00	0.00	83,000.00	0.00
Total Dept 850-LONG-TERM DEBT		282,200.00	290,500.00	0.00	290,500.00	0.00
TOTAL Expenditures						
		282,200.00	290,500.00	0.00	290,500.00	0.00
Fund 394 - DDA DEBT FUND:						
TOTAL REVENUES		282,200.00	282,200.00	0.00	282,200.00	0.00
TOTAL EXPENDITURES		282,200.00	290,500.00	0.00	290,500.00	0.00
NET OF REVENUES & EXPENDITURES		0.00	(8,300.00)	0.00	(8,300.00)	0.00
Fund 494 - DDA PROJECT FUND						
Revenues						
Dept 000-ASSETS, LIABILITIES & REVENUE						
494-000-665.000	INTEREST EARNED	0.00	0.00	6.86	(6.86)	100.00
Total Dept 000-ASSETS, LIABILITIES & REVENUE		0.00	0.00	6.86	(6.86)	100.00
TOTAL Revenues						
		0.00	0.00	6.86	(6.86)	100.00
Expenditures						
Dept 965-TRANSFERS OUT - CONTROL						
494-965-999.248	TRANSFER OUT TO DDA FUND 248	186,500.00	186,500.00	186,201.83	298.17	99.84
Total Dept 965-TRANSFERS OUT - CONTROL		186,500.00	186,500.00	186,201.83	298.17	99.84
TOTAL Expenditures						
		186,500.00	186,500.00	186,201.83	298.17	99.84
Fund 494 - DDA PROJECT FUND:						
TOTAL REVENUES		0.00	0.00	6.86	(6.86)	100.00
TOTAL EXPENDITURES		186,500.00	186,500.00	186,201.83	298.17	99.84
NET OF REVENUES & EXPENDITURES		(186,500.00)	(186,500.00)	(186,194.97)	(305.03)	99.84
TOTAL REVENUES - ALL FUNDS						
		762,000.00	762,000.00	230,241.23	531,758.77	30.22
TOTAL EXPENDITURES - ALL FUNDS						
		864,500.00	872,800.00	205,629.83	667,170.17	23.56
NET OF REVENUES & EXPENDITURES						
		(102,500.00)	(110,800.00)	24,611.40	(135,411.40)	22.21

Fund 494 has been closed and all assets moved to Fund 248.

**LaFontaine Chevrolet Michigan Tax Tribunal Case – *Nothing new at this time***

- AML Dexter LLC (the corporate owner of LaFontaine Chevrolet) has filed a petition to the Michigan Tax Tribunal to lower their taxable value from \$2,875,555 to \$1,250,000. This amount is lower than the taxable value used to calculate the Brownfield agreement. Our assessor, through attorney Scott Munzel, has filed an answer to the appeal and Nathan Voght at Washtenaw County has been notified.

**DDA Financial Forecast**

- An amended forecast reflecting actual bond costs after the refunding of the 2008 Taxable Bond is being presented for the DDA's consideration.

**DDA Project Summaries – *Nothing new at this time***

**Required Reporting**

- Form 5176 – Request for State Reimbursement of Tax Increment Finance Authority. Deadline to file for 2015 is June 15<sup>th</sup>. *Filed electronically with the Michigan Department of Treasury June 12, 2015.*
- Form 2604 – Tax Increment Financing Plan Report for Capture of Property Taxes (deadline to file is July 31<sup>st</sup> of each year). *Filed by mail July 29, 2015 with the Michigan Department of Treasury.*
- Qualifying Statement – File the Fiscal Year 2014-2015 Statement by December 31, 2015.
- Audit – File the 2014-2015 Audit by December 31, 2015.
- Publish the Fiscal Year 2014-2015 Annual Report by February 2015. *Report published February 25, 2015.*

**Tax Capture Update – *Nothing new at this time***

- The City has the assessment roll. Over the course of the next several months, the roll will be reviewed by the assessor, and he is aware that the DDA would like a review of parcels included within the district.

**Annual Audit**

- The audit is scheduled to start September 23<sup>rd</sup>. In August, City Council approved a new three year contract with PLSZ, LLP with no increase in costs for the DDA.

◆◆ SCOTT E. MUNZEL, P.C.  
ATTORNEY AT LAW

603 W. HURON STREET  
ANN ARBOR, MI 48103  
P: 734-994-6610 Fx: 734-769-9055  
E: SEM@MUNZELLAW.COM

8/10/2015

Ms. Courtney Nicholls  
Manager  
City of Dexter  
8140 Main Street  
Dexter, MI 48130

Invoice  
1591

DDA

\$ 6201.50

248.748.810.000

Re: Invoice for Legal Services - Dexter Wellness Center

Dear Ms. Nicholls:

The invoice for legal services provided in July is below. Please contact me if you have any questions. Please note I have divided this invoice between the City and DDA.

- |          |  |     |
|----------|--|-----|
| 7/1/2015 | TC Adam Sadowski re Joint Defense Agreement issue; TC Shawn Keough re no deposition, related issues; TC Courtney Nicholls re new FOIA request, issue of confidentiality prior to release; TC Cindy Maurer at MTT re subpoena form, directions to write letter requesting subpoena; TC Chris Renius re July 20 site inspection; prepare letter requesting Subpoena; review notes for documents to request "duces tecum"; fax subpoena request to MTT; send letter with request to parties | 3   |
| 7/2/2015 | TC Cindy Maurer re Subpoena is ready for pickup; TC Davi Hirsch to confirm her request to accept subpoena and not serve on Cope and her confirmation they would appear and be deposed even over objections (if any) of Schiff Hardin attorneys; TC Courtney re answers to CWF Interrogatory; TC Trinity re specific information for request for subpoena for CWF documents; prepare Notice of Deposition for Cope; scan Notice and Subpoena and email to parties; send same via USPS     | 1.9 |
| 7/6/2015 | Research re cases re corporate documents to cite in request for subpoena for documents; review transcript re Heydlauff stating confidentiality; draft letter requesting subpoena for documents from St. Joseph Mercy Health System; TC Adam Sadowski re suggestions; fax to MTT; email to parties; begin preparations for Power Wellness deposition; review PWM contract   | 4.0 |

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7/7/2015	Review evidence issues for Tribunal hearing; review DWC website; review CWF's First Interrogatory; review notes and prepare for Cope deposition; TC Adam Sadowski re coordination of Cope deposition; prepare outline for deposition; prepare exhibits to be used	9.7
7/8/2015	Prepare exhibits for Cope deposition; attend and take Cope deposition in Lansing at MTT; obtain Subpoena for St. Joe records from MTT; debrief with Shawn Keough; meet with Chris Renius to discuss case, issues, possible testimony; meet with Courtney Nicholls to discuss answers to CWF First Interrogatories	8.7
7/9/2015	Email Courtney re approval to release Joint Defense Agreement; email re follow up question from Schiff; TC David Haffey re possible testimony	1.3
7/10/2015	Consider new subpoena for PWM marketing study; conclude I can wait and see if produced; TC Adam Sadowski re strategy issues; order Cope transcript for Wednesday; email to Sally Guindi re request she receive subpoena; prepare Notice of Deposition for Guindi; TC process server- no one at St. Joe will accept service of subpoena; TC Sally Guindi re subpoena, documents requested, she does not want to accept service, she is the one her staff said would do so, how to handle	1.9
7/11/2015	Review Discovery and Pleading notebooks and Indexes	3.0
7/12/2015	Review notes to create to do list; begin Witness List and notes on general testimony; begin cross exam questions for Heydlauff; review Petition and Scio, Dexter responses; work on Pre-Hearing Statement	4.0
7/13/2015	Prepare new Notice of Deposition for Guindi; change date on Subpoena; deliver to Roy with instructions; TC Sally Guindi re documents she has, her belief one is not relevant but she will not give the relevant one unless I forego the second one; TC Shawn Keough, Courtney Nicholls re update, issues; TC Courtney re answers to Interrogatories; TC Adam Sadowski re update on Subpoena; work on Pre Hearing Statement; TC Marie Sherry re values for 2015; TC Sue Bertram re potential testimony at MTT; draft Answers to Interrogatories	6.0

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Page Three

7/14/2015	Prepare City Answers to CWF First Interrogatories, Requests to Admit and Documents Production; TC Marie Sherry re valuations; TC Courtney re information to be provided; proof and revise	12.0
7/15/2015	Prepare DDA Answers to CWF First Interrogatories, Requests to Admit and Documents Production; TC Shawn Keough re comments on Pre Hearing Statement; TCC Courtney Nicholls, Shawn Keough re comments on Answers; revise per comments; obtain Nicholls signature and mail Answers	6.5
7/16/2015	Email Sally Guindi re deposition on Tuesday; TC Adam Sadowski re dates; draft Stipulated Order to Extend Discovery for deposition; email to all parties for review; TC Jackie Cook re request to change date of inspection, apparent refusal to do so	1.7
7/17/2015	Prepare Motion for Site Inspection; TC Cindy Maurer re situation; TC Adam Sadowski, John Etter re whether they will file a response; TC LM Jackie Cook re same and if CWF would allow alternate date for inspection; email from Cook rejecting any alternate date; prepare cover letter and check; fax to MTT; send to parties; TC Ann Yarborough re deposition time and precise location; prepare Notice of Deposition for Guindi; send to parties; meet with David Haffey re accounting issues involved in petition	4.3
7/18/2015	Prepare final Pre-Hearing Statement; revise per Shawn and Courtney comments; obtain addresses of potential witnesses; prepare cover letter and send Statement to MTT and parties; review CWF responses to State's Interrogatories	1.8
7/20/2015	Review of comments by Cook on Stipulated Order, not acceptable; email from Mandy Murray that Sally Guindi is not available, please adjourn deposition; review Scio Township Pre-Hearing Statement	1.3
7/21/2015	Review CWF opposition to motion for site inspection; review CWF Pre Hearing Statement; review State Pre Hearing Statement; TC Adam Sadowski re witnesses; review emails from Mandy Murray re Guindi; send email to Murry adjourning Guindi deposition; send email to parties re same, also postpone work on stipulation	2.3

8/10/2015

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7/23/2015

Study CWF Witness List as to who might need to be  
deposed; TC Cindy Maurer to confirm do not need sub-  
poenas unless CWF will not cooperate

0.5

	Total Time	73.9 at \$170/hr
	Current Invoice	\$ 12,563.00
Expenses- service fees-Guindi \$80; motion fees \$100		\$ 180.00
	Total Balance Due	\$ 12,743.00
	minus courtesy discount	\$ 340.00
	Revise Total Balance	\$ 12,403.00
Divided between DDA and Village		\$6,201.50
	Outstanding balance	\$19,286.98
	Total amount due	\$25,488.48

Sincerely,



Scott E. Munzel

EIN 38-3120196

## Memorandum

**To:** Chairman Brouwer and DDA Board of Directors  
Courtney Nicholls, City Manager

**From:** Michelle Aniol, Community Development Manager

**Re:** Downtown Redevelopment Opportunity Update

**Date:** September 16, 2015

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The responses to our Downtown Redevelopment Opportunity RFQ have been reviewed by staff and an ad-hoc committee that is comprised of members of the Dexter DDA, City Council and Economic Preparedness Committee. The Committee determined that all three respondent submittals demonstrated substantial experience in urban mixed-use redevelopment. The next step is the interviews.

We have chosen a public forum to conduct the interviews. Each firm will make a presentation to the committee and the audience at-large, as to why they would be the best partner for the City/DDA. After each presentation there will be Q&A with the Review Committee, followed by written questions from the audience. There will be a 5 minute break between presentations/interviews.

The agenda is outlined below:

- 5:00 pm Welcome and introductions (10 minutes)
- 5:10 pm MHT Housing (15 minutes)  
Q & A with Committee (15-20 minutes)  
Written questions from audience (15-20 minutes)
- <5 minute break>
- 6:10 pm Foremost Development (15 minutes)  
Q & A with Committee (15-20 minutes)  
Written questions from audience (15-20 minutes)
- <5 minute break>
- 7:10 pm Home Renewal Systems (15 minutes)  
Q & A with Committee (15-20 minutes)  
Written questions from audience (15-20 minutes)
- 8:10 pm Closing remarks and thank you to developers, committee and attendees (5 minutes)
- 8:25 pm Networking

All interviews will take place at the Dexter District Library (3255 Alpine Street), on Tuesday, September 29, 2015.

The ad-hoc committee will be meeting next week to map out a post-interview strategy.

# DEXTER

M I C H I G A N

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You are invited to witness the

## DEVELOPER INTERVIEWS

For the redevelopment of 3045 Broad St.  
(Former DAPCO site)

September 29  
5:00 pm - 8:30 pm

Dexter District Library  
3255 Alpine St, Dexter, MI 48130



You are invited to witness the

# DEVELOPER INTERVIEWS

For the redevelopment of  
3045 Broad St. (Former DAPCO site)

September 29  
5:00 pm - 8:30 pm

Dexter District Library  
3255 Alpine St, Dexter, MI 48130

Please provide your comments/Questions

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To be added to our email mailing list, please provide your email:

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Please provide your comments/Questions

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To be added to our email mailing list, please provide your email:

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Please provide your comments/Questions

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To be added to our email mailing list, please provide your email:

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Please provide your comments/Questions

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OFFICE OF COMMUNITY DEVELOPMENT

8140 Main Street • Dexter, Michigan 48130-1092 • (734) 426-8303 • Fax (734) 426-5614

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## Memorandum

**To:** Chairman Brouwer and DDA Board of Directors  
Courtney Nicholls, City Manager

**From:** Michelle Aniol, Community Development Manager

**Re:** Final TMA Report Update

**Date:** September 16, 2015

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The final Target Market Analysis Report has been drafted and will be presented on Thursday, Wednesday, October 7<sup>th</sup> at 5:00 pm, at the Dexter District Library. All boards, commissions and the public are invited to attend. All members of the DDA are encouraged to attend.

You were sent a link to access the report via Dropbox. Please let me know if you have trouble accessing the document or would prefer a hard copy.



## Memorandum

**To:** Chairman Brouwer and DDA Board of Directors  
Courtney Nicholls, City Manager

**From:** Michelle Aniol, Community Development Manager

**Re:** Retail Market Analysis Update

**Date:** September 16, 2015

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City Council voted unanimously to award the Retail Market Study contract to Chuck Eckenstahler/Fanning Howey, as recommended by the DDA. Staff forwarded the grant application to the Chamber of Commerce, and the Chamber submitted the application to Washtenaw County. The Local Economies Grant Committee will consider the application during its October 2, 2015 meeting. Grants of up to \$10,000 are still available.

## Memorandum

**To:** Chairman Brouwer and DDA Board of Directors  
Courtney Nicholls, City Manager

**From:** Michelle Aniol, Community Development Manager

**Re:** Report for September 17, 2015 DDA Meeting

**Date:** September 16, 2015

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- Staff met with City Attorney, Steve Estey (Dykema) and Laura Kreps (CWA) to discuss the implications of the recent Supreme Court ruling on governmental sign regulations. As you will recall, in June the US Supreme Court ruled any sign law that is content-based is subject to the most enacting rules for justification- and that any government signage rule that treats one group differently from another is automatically suspect and likely to fail what the court calls "strict scrutiny."

The ruling came about due to a case in Gilbert, AZ. The Good News Church sued the town of Gilbert over limits the municipality imposed on signs temporarily posted to provide event directions. While the ruling has left a variety of questions unanswered, it did clarify some aspects of sign regulations, such as:

- Content based regulations are subject to strict scrutiny and are presumptively unconstitutional.
- Both facial content neutrality and a neutral purpose for sign regulations are required, and a regulations purpose is irrelevant if the regulation is not neutral on its face.
- Categorical signs, such as directional signs, real estate signs, construction signs, political, etc., are content based where they are defined by aspects of the signs message.
- Categorical signs which purport to be "speaker based", that is, the regulation applies to certain speakers but not others, may be found content based and subjected to strict scrutiny.

Mr. Estey has done a cursory review of the sign regulations and has concerns about those dealing with temporary signs (Section 7.07). He stressed that regulations for temporary signage must be consistent in regards to size, height, area, location and duration, and he would like to review the draft sign regulations before any decisions are made. He also needs to research the impact the ruling may have on commercial vs non-commercial speech, as it relates to signage.

Lastly, Mr. Estey said City Council may enact a temporary moratorium (i.e. six months) on all temporary signage in light of the Reed decision, if it so chooses. This would give the city time to evaluate existing regulations and develop new regulations

The challenge moving forward will be to balance content neutrality with the desire to regulate signage, for aesthetic purposes, in the community. In the meantime, attached to this report you will find an excerpt from Planning and Zoning News, which summarizes the Court's decision and provides suggestions for practice.

- Scott Merz, President of MC3 and Dexter Schools Superintendent, Chris Timmis are working together to reach out to local Dexter businesses that could serve as career resources for Dexter

Schools. This effort is associated with a new project Dr. Timmis is spearheading called, Community Careers Network. A copy of the letter that will be sent out to Dexter based businesses is attached to this memo. Dr. Timmis and Mr. Merz have indicated a desire to make a presentation at our next Business Summit, which will be scheduled for December. MC3 has agreed to be our host. Staff assisted by providing business contact information.

- The Pre-Application Committee review a concept plan for a covered patio for Hotel Hickman on September 14, 2015. Staff anticipates the owner, Scott Thomas to submit an application for special land use approval soon. The Planning Commission would then hold a public hearing, most likely on November 2, 2015.
- Street trees in Westridge have been tentatively scheduled for pruning the first week in October. The City's arborist and DPW crew will be conducting the work. The Westridge HOA and residents will be notified.
- At its meeting on Tuesday, September 8, 2015, the Planning Commission took action on the following items:
  - Northern United Brewing Company (NUBC) - The Planning Commission determined that 1) Northern United Brewing Company's request for an accessory restaurant was compatible with the PD Research and Development Zoning District, and 2) the proposed accessory restaurant required special land use approval. The Planning Commission will conduct a public hearing to consider NUBC's request for special land use approval, for the accessory restaurant on Monday, October 3, 2015.
  - Dan Hoey Medical Office Building – The Planning Commission recommended final site plan approval of a medical office building on a vacant parcel on Dan Hoey Road to City Council.
  - Beer Grotto Outdoor Seating Request - The Planning Commission recommended special land use approval of an outdoor seating area for the Beer Grotto to City Council.
- Pat Greve from Waste Management is still working on a cost estimate for underground waste containers and will forward it as soon as it's completed. In the meantime, he estimates the cost will be in the \$10,000 range, including installation.
- Interesting Facts:
  - There is approximately one (1) million square feet of gross floor area, for manufacturing and R&D uses, in Dexter Business and Research Park.
  - There are 3 vacant parcels in the Park, but they are not available. They are slated for future development by their owners. As a result, the park is virtually built-out.

# U.S. SUPREME COURT REITERATES FIRST AMENDMENT I REQUIRES CONTENT NEUTRAL SIGN REGULATIONS

P21

By Brian Connolly, Otten Johnson Robinson Neff & Ragonetti, PC, Denver, Colorado

Reed et al. v. Town of Gilbert, Arizona, et al. U.S. \_\_\_\_, 135 S. Ct. \_\_\_\_ (2015). U.S. Supreme Court No. 13-502. Decided June 18, 2015.

Regulating signs in a content neutral manner satisfying First Amendment limitations will be more difficult for local governments following June's U.S. Supreme Court decision in the case of *Reed v. Town of Gilbert*.<sup>1</sup> In *Reed*, all nine Supreme Court justices agreed that the Town of Gilbert, Arizona's sign code failed the First Amendment's content neutrality requirement, although the justices arrived at that conclusion in different ways.

The ruling, which resolves a long-standing split between federal circuit courts of appeal on the meaning of "content neutrality," carries significant consequences for the validity of local sign regulations. Indeed, many local codes may become unconstitutional as a result of the case's outcome. Sign litigation can be expensive and risky, and it is likely to become more frequent after *Reed*. Local governments are therefore strongly advised to review their sign codes with a lawyer versed in First Amendment issues to avoid potential liability and invalidation of local sign codes as a result of the *Reed* decision.

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**Many local codes may become unconstitutional as a result of this case. Sign litigation can be expensive and risky, and it is likely to become more frequent after *Reed*.**

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## Factual Background

*Reed* was the first U.S. Supreme Court case since *City of Ladue v. Gilleo*,<sup>2</sup> decided in 1994, to address local sign regulations. The issue in *Reed*: Gilbert's sign code contained a general requirement that all signs obtain a permit, but then exempted several categories of signs from its permitting requirement.<sup>3</sup> These exemptions from the permitting requirement treated certain categories of exempted signs differently. As with many other sign codes around the United States, Gilbert's sign code recited traffic safety and aesthetics as the reasons for its existence.

Of relevance to the case were three of these categories: "political signs," "ideological signs," and "temporary directional signs." While the town did not prohibit any of these categories of speech, each category was treated differently by the sign code. The town's regulations of political signs, defined as a "temporary sign designed to influence the outcome of an election called by a public body," allowed such signs to have a sign area of up to 16 square feet on residential property and up to 32 square feet on nonresidential property, and such signs could be displayed for up to 60 days before a primary election and up to 15 days following a general election.<sup>4</sup>

Temporary directional signs were defined as a "[t]emporary [s]ign intended to direct pedestrians, motorists, and other pass-

ers by to a 'qualifying event.'"<sup>5</sup> A "qualifying event" was any "assembly, gathering, activity, or meeting sponsored, arranged, or promoted by a religious, charitable, community service, educational, or other similar non-profit organization."<sup>6</sup> Temporary directional signs could not exceed six square feet in sign area, could be placed on private property or in the right-of-way, and no more than four signs could be placed on private property at once. Additionally, temporary directional signs could be displayed for up to 12 hours before the qualifying event, and no more than one hour after the qualifying event, and the date and time of the qualifying event were required to be displayed on each sign.

Finally, "ideological signs" were defined as any "sign communicating a message or ideas for noncommercial purposes that is not a Construction Sign, Directional Sign, Temporary Directional Sign Relating to a Qualifying Event, Political Sign, Garage Sale Sign, or a sign owned or required by a governmental agency."<sup>7</sup> Ideological signs could be as large as 20 square feet and could be placed in any zoning district without limitations on display time.

Good News Community Church, of which Clyde Reed is pastor, was a "homeless" church. The church rented space in local community facilities, such as elementary schools, for Sunday services. In order to inform passersby of its services and the locations thereof, Good News and Pastor Reed placed temporary signs in street right-of-ways advertising religious services. The signs were typically posted for a period of approximately 24 hours. Because the time of the posting exceeded the time limits provided for temporary directional signs, Gilbert attempted in July 2005 to enforce its sign code against the church's signs, and town officials removed at least one of the church's signs.

## Court Proceedings

Having failed to reconcile its differences with the town, in March 2008, the church filed an action in federal district court claiming violations of the Free Speech Clauses of the First Amendment.<sup>8</sup> The district court denied the church's motion for a preliminary injunction, and the Ninth Circuit Court of Appeals affirmed.<sup>9</sup> The Ninth Circuit found that the temporary event sign regulations were content neutral as applied, but remanded the question of whether the town impermissibly distinguished between forms of noncommercial speech on the basis of content.

On remand, the district court granted summary judgment in favor of the town, and determined that the town's exemptions from permitting were content neutral, despite the fact that the code regulated on the basis of the messages' category.<sup>10</sup> The Ninth Circuit again affirmed, finding that the code's distinctions between temporary event signs, political signs, and ideological signs were content neutral, since the town "did not adopt its regulation of speech because it disagreed with the message conveyed."<sup>11</sup> The Ninth Circuit determined that the town's regulatory interests were unrelated to the content of the signs being regulated.<sup>12</sup>

The Ninth Circuit's decision in *Reed* focused principally on the government's regulatory purpose in determining that the town's sign regulations were content neutral, and specifically rejected the suggestion that the Gilbert sign code was content based because it discriminated between categories of noncommercial speech on its face. That decision paralleled similar decisions in other federal circuit courts of appeal, including the Third,<sup>13</sup> Fourth,<sup>14</sup> and Sixth<sup>15</sup> (covering Michigan) circuits. These courts generally rejected arguments raised by sign owners that sign codes differentiating among sign types based on broad categories—i.e., political, real estate, construction, etc.—was indicative of the type of content discrimination prohibited by the First Amendment.

Two other circuits, the Eighth<sup>16</sup> and Eleventh,<sup>1</sup> took a much stricter approach that demanded that sign regulations should not

## About the Author

Brian Connolly is an attorney with Otten Johnson Robinson Neff & Ragonetti, PC in Denver, Colorado. He has two degrees in urban planning from Cornell University, and is co-author of the *Michigan Sign Guidebook*. He can be reached at: [bconnolly@ottenjohnson.com](mailto:bconnolly@ottenjohnson.com). □

in any way differentiate among signs based upon message. Under this approach, if a code enforcement officer was required to read the text of a sign to properly enforce the code, the sign code should be found content based. Thus, distinguishing between, for example, political signs and event signs would be constitutionally fatal under this latter approach.

Recognizing this split among the courts of appeals, the Supreme Court granted *certiorari* review in *Reed*.

### Loss for the Town

In the Supreme Court's *Reed* decision, justices unanimously agreed that the town's sign code was content based.

The majority opinion, authored by Justice Clarence Thomas and joined by five other justices, held that regulations of speech must be both facially content neutral and content neutral in their purpose. As the Court said, the "commonsense meaning of the phrase 'content based' requires a court to consider whether a regulation of speech 'on its face' draws distinctions based on the message a speaker conveys."<sup>18</sup> Thus, if a sign code makes any distinctions based on the message of the speech, the sign code is content based. According to the majority, only after determining whether a sign code is neutral on its face should a court inquire as to whether the law is neutral in its justification. Because Gilbert's sign code differentiated between political, ideological, and event signs based on the message of the sign, the code was found content based.

Upon making that finding, the majority applied *strict scrutiny*, the most demanding form of constitutional review, which requires the government to show that "the restriction furthers a compelling interest and is narrowly tailored to achieve that interest."<sup>19</sup> As exemplified by *Reed*, regulations subjected to strict scrutiny rarely survive a court's review. Because the code placed strict limits on temporary event signs but more freely allowed ideological signs—despite the fact that both sign types have the same effect on traffic safety and community aesthetics—the code failed the narrow tailoring requirement of strict scrutiny.

"Because Gilbert's sign code differentiated between political, ideological, and event signs based on the message of the sign, the code was found content based. \*\*\* Because the code placed strict limits on temporary event signs but more freely allowed ideological signs—despite the fact that both sign types have the same effect on traffic safety and community aesthetics—the code failed the narrow tailoring requirement of strict scrutiny."

Three concurring opinions were filed in the case. Justice Samuel Alito filed a concurrence, joined by two other justices, in which he agreed with the majority's ruling, but listed nine forms of sign regulation that he would find to be content neutral. These forms included regulation on the basis of size, location, lighting, fixed versus electronic messaging, public versus private property, residential versus commercial property, on- and off-premises distinctions, and display time limits.<sup>20</sup>

In two concurring opinions, one by Justice Stephen Breyer and the other by Justice Elena Kagan, three justices concurred in the judgment but disagreed with the majority's application of strict scrutiny to the Gilbert code. Justices Breyer and Kagan would have applied *intermediate scrutiny*, a less demanding constitutional standard that requires the government to demonstrate that a speech regulation is narrowly tailored to a significant (as opposed to compelling) governmental interest. Traffic safety and aesthetics, for example, are significant governmental interests.<sup>21</sup> Still, however, both Justices Breyer and Kagan found the Gilbert sign code unconstitutional, because its sign categories were not tailored to the code's stated regulatory purposes. As the majority found, the distinctions between temporary event signs, political signs, and ideological signs did nothing to further the government's goal of beautifying the community and reducing traffic hazards.

### Answers and Questions After *Reed*

*Reed* clarified some aspects of sign regulation, but also left several questions unanswered. Four points of clarification from *Reed* are worth mentioning. First, the decision reaffirmed the principle that content based regulations are subject to strict scrutiny and presumptively unconstitutional. Second, the majority opinion resolved the prior split between the circuit courts of appeal by requiring both facial content neutrality and a neutral purpose for sign regulations, and determined that a regulation's purpose is irrelevant if the regulation is not neutral on its face. Third, the Court determined that categorical signs, such as directional signs, real estate signs, construction signs, etc., are content based where they are defined by aspects of the signs' message. Fourth, the Court stated that categorical signs which purport to be "speaker based," that is, the regulation applies to certain speakers but not others, may be found content based and subjected to strict scrutiny.

As for unanswered questions following *Reed*, there are many, including the following:

- Is there any form of sign regulation by category or function which is still constitutional? For example, is there any way for a local government to regulate temporary event signs, political signs, real estate signs, construction signs, directional or wayfinding signs, or are all of these distinctions now constitutionally fatal?
- Is distinguishing between on-premises and off-premises signs still constitutional? This distinction has, for example, allowed states and local governments to regulate billboards and standard onsite business signs differently. The *Reed* majority did not address this question, nor did it specifically overrule *Metro-media v. City of San Diego*, which previously upheld the on-premises/off-premises distinction.
- What does *Reed* mean for commercial speech regulation? Technically, *Reed* applies only to noncommercial speech, but some of the references in *Reed* point to cases that reviewed commercial speech regulations. Specially, *Reed* cites extensively to *Sorrell v. IMS Health*,<sup>22</sup> a 2011 case in which the Supreme Court applied a content neutrality analysis typically reserved for regulations of noncommercial speech to a Vermont regulation of commercial speech. If *Sorrell* implicitly gave more constitutional protection to commercial speech, does *Reed* expand upon this protection?
- What is *Reed*'s impact on the highway advertising acts that exist in all 50 of the states? For example, the Michigan Highway Advertising Act of 1972 prohibits signs "that purport to regulate, warn, or direct the movement of traffic or that interfere with, imitate, or resemble any official traffic sign, signal, or device."<sup>23</sup> Under the *Reed* majority's analysis, many of these prohibitions could be deemed content based and subject to strict scrutiny.
- Is sign regulation on the basis of land use still constitutional? The *Reed* majority marginalized Gilbert's defense that its sign code did not regulate the content of signage, but rather regulated on the basis of the sign owner or speaker, and noted that speaker-based regulation could also be subject to strict scrutiny if "the legislature's speaker preference reflects a content preference."<sup>24</sup> What constitutes speaker-based regulation? When does a speaker preference reflect a content preference? Is sign regulation by land use speaker-based if, say, residential property owners get less signage than commercial property owners?
- Does the *Reed* majority opinion overrule prior cases which upheld special regulations for adult businesses based on the "secondary effects" doctrine? The secondary effects doctrine holds that regulations of certain types of speech, such as adult entertainment, are content neutral when they are justified on the grounds that certain types of speech have negative "secondary effects" on the surrounding community.<sup>25</sup>
- What governmental interests, if any, are sufficiently compelling for sign regulations to survive strict scrutiny? Lower courts have held that aesthetics is not a compelling interest,

and some have similarly held that traffic safety is not compelling. The Reed majority suggests some sign regulations which might survive strict scrutiny, but does not provide much guidance on this question.

### Suggestions for Practice

The result in *Reed* puts a much greater obligation on local governments to ensure that sign regulations are content neutral both on their face and in the government's underlying purpose for the regulations. Some observers anticipate that the decision will result in more freedom for sign owners to display signs of various messages, while others have suggested that the result in *Reed* might encourage governments to take a more cautious approach to sign regulation that more broadly suppresses speech. In any event, *Reed* is almost certain to provide sign owners with additional firepower to challenge local sign codes, and puts local governments at increased risk of a sign code challenge.

Local governments are not without options, however. *As a first step, local governments should review their sign codes carefully, with an eye toward whether the code is truly content neutral.* Consult a lawyer knowledgeable in First Amendment and sign issues to conduct an initial review and provide recommendations. If the sign code contains some potential areas of content bias—for example, if the code contains different regulations for political signs, construction signs, real estate signs, or others—consider amending the code to remove these distinctions.

In cases where a sign code update might take time, local planners and lawyers should coach enforcement staff not to enforce distinctions which might cause problems. Gilbert was steadfast in its sign enforcement, but that steadfastness resulted in ten years of litigation and excessive legal fees for the town. If a local sign code contains content based distinctions and a private party complains of differential treatment, it may be wise for the local government to avoid enforcement action on questionably content based rules.

Local governments should also ensure that sign codes contain all of the "required" elements of a sign code.

1. The code should contain a purpose statement that, at the very minimum, references traffic safety and aesthetics as purposes for sign regulation.

2. The code should contain a message substitution clause that allows the copy on any sign to be substituted with non-commercial copy. **P23**
3. The code should contain a severability clause to increase the likelihood that the code will be upheld in litigation, even if certain provisions of the code are not upheld.

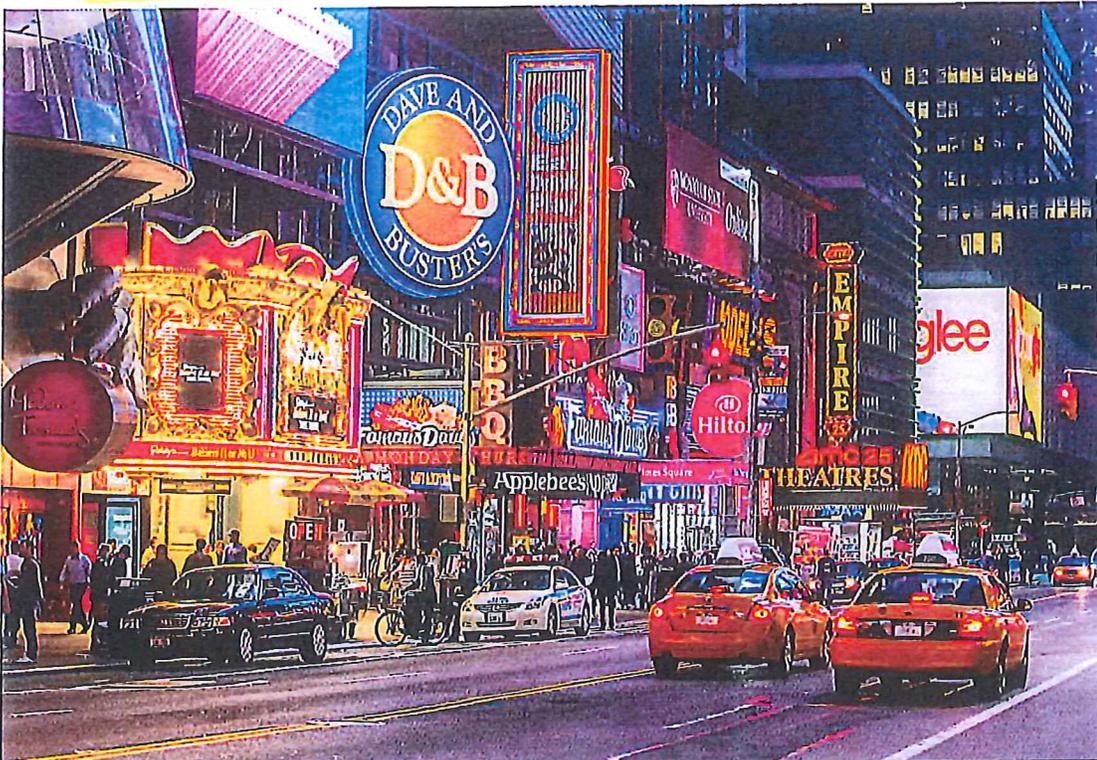
In preparing the purpose statement, it is always best to link regulatory purposes to data, both quantitative and qualitative. For example, linking a regulatory purpose statement to goals of the local comprehensive plan, such as community beautification, increases the likelihood that the code will survive a challenge. If traffic safety is one of the purposes of the sign code (it should be), consult studies on signage and traffic safety to draw the connection between sign clutter and vehicle accidents.

In conducting the review of the sign code recommended above, planners and lawyers should look to whether the code contains any of the sign categories that most frequently lead to litigation. For example, if the code creates categories for political signs, ideological or religious signs, real estate signs, construction signs, temporary event signs, or even holiday lights, it is likely that the code is at greater risk of legal challenge. As a general rule of thumb, the more complicated a sign code is, i.e., the more categories of signs the code has, there will be a higher risk of a legal challenge.

### Conclusion

*Reed* is likely to precipitate a significant shift in courts' treatment of sign codes under a First Amendment challenge. Local governments thus would be wise to undertake sign code reviews and, if necessary, revise now to ensure that the code does not contain any of the content based distinctions that created problems for Gilbert. Where necessary, local governments should consult resources—including planners and lawyers knowledgeable in First Amendment issues—to be certain that sign codes do not carry more risk than the local government desires to bear.

Readers are encouraged to obtain a copy of *Michigan Sign Guidebook: The Local Planning and Regulation of Signs*, published by Scenic Michigan. More information can be found at <http://scenicmichigan.org/sign-regulation-guidebook/>.



Note: Portions of this article are excerpted from Brian J. Connolly, *Supreme Court Will Review Sign Case With Significant Consequences for Governments, Businesses, Rocky Mountain Real Estate Law*, <http://www.rockymountainrealestatelaw.com/2014/07/supreme-court-will-review-sign-case-with-significant-consequences-for-governments-businesses/> (Jul. 31, 2014); and Brian J. Connolly, *U.S. Supreme Court Deals Significant Setback for Local Governments in Sign Case, Rocky Mountain Real Estate Law*, <http://www.rockymountainrealestatelaw.com/2015/06/u-s-supreme-court-deals-significant-setback-for-local-governments-in-sign-case/> (Jun. 18, 2015).

- Q. Which signs in this photo of Times Square must be subject to content neutral sign regulations?  
 A. All noncommercial signs, and perhaps commercial signs as well. Are your sign regulations content neutral?

## FOOTNOTES

- 1 576 U.S. \_\_\_, 135 S. Ct. 2218 (2015).
- 2 512 U.S. 43 (1994).
- 3 *Reed*, 135 S. Ct. at 2224.
- 4 *Id.* at 2224. Note that Arizona has a statute which prohibits local governments from removing certain political signs placed in connection with an election. A.R.S. § 16-1019(C).
- 5 *Id.* at 2225.
- 6 *Id.*
- 7 *Id.* at 2224.
- 8 The church also asserted Free Exercise Clause and Arizona Religious Freedom Restoration Act claims, however, only the Free Speech Clause claims were at issue on appeal.
- 9 *Reed v. Town of Gilbert*, 587 F.3d 966 (9th Cir. 2009).
- 10 *Reed v. Town of Gilbert*, 832 F. Supp. 2d 1070 (D. Ariz. 2011).
- 11 *Reed v. Town of Gilbert*, 707 F.3d 1057, 1071-72 (9th Cir. 2013).
- 12 *Id.*
- 13 *See, e.g., Rappa v. New Castle County*, 18 F.3d 1043 (3d Cir. 1994).
- 14 *See, e.g., Brown v. Town of Cary*, 706 F.3d 294 (4th Cir. 2013).
- 15 *See, e.g., H.D.V.-GREEKTOWN, LLC v. City of Detroit*, 568 F.3d 609 (6th Cir. 2009).
- 16 *See, e.g., Neighborhood Enters., Inc. v. City of St. Louis*, 644 F.3d 728 (8th Cir. 2011).
- 17 *See, e.g., Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250 (11th Cir. 2005).
- 18 *Reed*, 135 S. Ct. at 2227.
- 19 *Id.* at 2231 (citation omitted).
- 20 *Id.* at 2233.
- 21 *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 807 (1984).
- 22 131 S. Ct. 2653 (2011).
- 23 M.C.L. § 252.318.
- 24 Slip op. at 13.
- 25 *See, e.g., City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986). □

# TAKINGS CLAUSE BARS GOVERNMENT FROM DEMANDING A CROP SET ASIDE TO MAINTAIN AN ORDERLY MARKET WITHOUT JUST COMPENSATION

By Steven P. Joppich, Johnson, Rosati, Schultz & Joppich, P.C., Farmington Hills

*Horne, et al v Department of Agriculture*, 576 U.S. \_\_\_\_ (2015). U.S. Supreme Court Case No. 14-275. Decided June 22, 2015.

The Supreme Court's opinion in this case is divided into three "Parts." Part I is generally the facts and procedural history of the case. Part II addresses three questions pertaining to a Takings Clause analysis, but not including the issue of just compensation. Part III addresses the relevance of the just compensation portion of a takings analysis.

## PART I

The Agricultural Marketing Agreement Act of 1937 is a federal statute that authorizes the U.S. Secretary of Agriculture to adopt what are called "marketing orders" for the purpose of maintaining stable markets for particular agricultural products. The California Raisin Marketing Order ("Order") at issue in this case requires growers in certain years to physically turn over a percentage of their crop to the federal government, free of charge. The required percentage is determined by the Raisin Administrative Committee, which is ap-

### About the Author

Steven P. Joppich is a shareholder at the law firm of Johnson, Rosati, Schultz & Joppich, P.C., which serves municipalities throughout Michigan as general counsel and litigation counsel with offices located in Farmington Hills, Lansing and Marshall. Steve may be contacted at [sjoppich@jrsjlaw.com](mailto:sjoppich@jrsjlaw.com). □

pointed by the Secretary of Agriculture. In 2003 – 2004, this Committee ordered raisin growers to turn over 30% of their crops, and 47% in 2002 – 2003.

The process involves growers generally shipping their raisins to a raisin "handler," who separates out the raisins that are due to the government under the Order (the "reserve raisins"), pays the growers only for the remainder, and packs and sells that remainder on the open market. The Raisin Committee takes physical possession of the raisins that have been set aside for the federal government, and decides how to dispose of them in its discretion. The Committee sells some of them on the noncompetitive markets (e.g., to exporters, federal agencies or foreign governments), donates some to charitable causes or other growers who agree to reduce their raisin production voluntarily, and disposes the remainder by any other means consistent with the purposes of the raisin program. The growers retain an interest in any net proceeds from the Committee's sales, after deductions for certain subsidies and federal government administrative expenses. In some years, such net proceeds were less than the cost of producing the crop or nothing at all.

The plaintiffs are both raisin growers and handlers (i.e., they "handle" both their own raisins and those produced by other growers). In 2002, the plaintiffs refused to set aside any raisins for the government. The federal government sent trucks to plaintiffs' facility to pick up the raisins, but the plaintiffs refused entry. The Department of Agriculture then assessed a fine equal to the market value of the missing raisins (approximately \$480,000.00) and a civil penalty for disobeying the

Order to turn them over (approximately \$200,000.00). The plaintiffs then filed this suit claiming that the reserve requirement was an unconstitutional taking of their personal property under the Fifth Amendment.

Initially, the federal government argued that the lower courts did not have jurisdiction to consider the plaintiffs' constitutionally-based "takings" defense to the fine imposed by the Department of Agriculture. In 2013, that issue came before the U.S. Supreme Court, which rejected the government's argument and returned the case back to the Court of Appeals in order to address the plaintiffs' constitutional arguments.

Upon receiving the case back from the Supreme Court, the Court of Appeals entered a ruling that rejected the plaintiffs' argument. In support of this ruling the lower court asserted that "the Takings Clause affords less protection to personal than to real property," and it found that growers "are not completely divested of their property rights," because growers retain an interest in the proceeds from the federal government's sale of reserve raisins (as this summary describes above). The Court of Appeals went on to explain that the government in this case is imposing a reserve requirement in exchange for a government benefit (being an orderly raisin market), and the plaintiffs could avoid the reserve requirement by planting different crops. The lower court likened this case to a situation where a landowner could avoid a governmental requirement for a land use permit simply by using the land for another purpose that does not require a permit, which circumstance generally serves to mitigate against a regulatory

*Superintendent's Office*



**Dexter Community Schools**  
7714 Ann Arbor Street  
Dexter, MI 48130  
Phone: (734) 424-4100 ext 1001  
Website: [www.dexterschools.org](http://www.dexterschools.org)

August 21, 2015

Dear Dexter Businesses,

The Dexter community is a community of learners. While our students and staff continue to grow skills within our classroom walls, our community has much to share and teach us. As a component of shaping the future of education for our children, we're looking at unique ways to engage our community and utilize their skills for the benefit of our students. One of these initiatives is to reach out to community resources and local businesses interested in helping our students and DCS in unique ways.

Dexter is home to many unique businesses and cutting-edge technologies. Our students are only a few hundred yards from an industrial park that houses incredible knowledge and skills we would like to engage with our students and staff.

As a result, we believe DCS students will be more aware of career options available to them, and teachers will have access to real-world examples to motivate students. Dexter students will learn about local job opportunities, which will strengthen the local talent pool by encouraging top students to stay in the area after graduation.

In particular, we're interested in knowing if your local business/employer would be willing to:

- Help prepare a video introduction of your company that would be made available for viewing by students
- Give company tours to teachers, parents, and/or students
- Participate in a career fair
- Host an event at your company (e.g., teacher/industry mixer)
- Present in a class during school hours
- Be referred to parents/students as a resource for career advice
- Provide summer (or after-school) internship opportunities to students and/or teachers

If you're interested and willing to become part of the DCS Community Careers Network, please click [here](#) to fill out the Dexter Community Careers Network form.

Thank you for your continued commitment to Dexter Community Schools and Go Dreads!

Sincerely,

Christopher Timmis, Ed.D.  
Superintendent

