

**BRIGHAM CITY APPEAL AUTHORITY  
MARCH 11, 2009 – MEETING MINUTES**

<u>PRESENT:</u>	George Berkley	Chairman
	Marilyn Peterson	Member
	Jaye Poelman	Member
	Fred Randall	Member
	Barbara Stokes	Member

<u>ALSO PRESENT:</u>	Jeff Leishman	Associate Planner
	Holly Bell	Alternate

AGENDA:

1. ELECTION OF CHAIR AND VICE CHAIR FOR 2009 CALENDAR YEAR
2. APPROVAL OF THE AGENDA
3. APPROVAL OF THE JANUARY 14, 2009 MEETING MINUTES
4. APPLICATION #618 / APPEAL CONCERNING A LAND USE AUTHORITY DECISION ADMINISTERING CHAPTER 29.27 SIGN ORDINANCE / 902 SOUTH MAIN STREET / MCDONALD'S CORPORATION

George Berkley opened the meeting at 5:30 p.m. and explained that the Appeal Authority has the ability to review certain applications submitted to the City as well as various appeals. The Appeal Authority is a body established by State Law and is a quasi-judicial body whose members are appointed by the Mayor and approved by the City Council. The Appeal Authority can hear and decide matters in various different categories involving appeals. He welcomed those in attendance and informed them that if any actions taken by the Appeal Authority are thought to be inappropriate an appeal to the District Court can be filed within 30-days of the action.

1. ELECTION OF CHAIR AND VICE CHAIR FOR 2009 CALENDAR YEAR

**NOMINATIONS FOR CHAIRMAN:** Barbara Stokes nominated Jaye Poelman for Chairman. Jaye Poelman nominated George Berkley for Chairman.

**MOTION:** A motion was made by Barbara Stokes to cease nominations for Chairman. The motion was seconded by Marilyn Peterson and passed unanimously.

There were two votes in favor of Jaye Poelman and three votes in favor of George Berkley. George Berkley will be the Chairman for the 2009 calendar year.

**NOMINATIONS FOR VICE CHAIR:** Marilyn Peterson nominated Barbara Stokes for Vice Chair. Barbara Stokes nominated Jaye Poelman for Vice Chair.

**MOTION:** A motion was made by Barbara Stokes to cease nominations for Vice Chair. The motion was seconded by Marilyn Peterson and passed unanimously.

There were three votes in favor of Barbara Stokes and two votes in favor of Jaye Poelman. Barbara Stokes will be the Vice Chair for the 2009 calendar year.

2. APPROVAL OF THE AGENDA:

**MOTION:** A motion was made by Marilyn Peterson to approve the agenda. The motion was seconded by Barbara Stokes and passed unanimously.

3. APPROVAL OF THE JANUARY 14, 2009 MEETING MINUTES:

**MOTION:** A motion was made by Barbara Stokes to accept the minutes of the January 14, 2009 meeting as written with no corrections or additions. The motion was seconded by Fred Randall.

Discussion: George Berkley noted some corrections. On line 185 the first use of the word 'the' should be changed to the word 'he'. On line 341 suggested adding the word 'fire' before the word 'wall' to make it read 'firewall' for clarification. Ms. Stokes mentioned noticing a spelling error which would not change the meaning of the sentence but could not recall where it was located or what it was but she thought the word she noticed was missing the letter 't' which would make the word 'that'. It was recommended making that change if it can be found.

**MOTION:** Ms. Stokes motioned to amend her motion with the corrections that had been stated. The motion was seconded by Jaye Poelman and passed unanimously.

4. APPLICATION #618 / APPEAL CONCERNING A LAND USE AUTHORITY DECISION ADMINISTERING CHAPTER 29.27 SIGN ORDINANCE / 902 SOUTH MAIN STREET / MCDONALD'S CORPORATION

Scott Lilja with Vancott Law Firm came forward and stated that he was representing McDonald's Corporation; accompanying him was Steve Jenkins, Construction Manager for McDonald's Corporation. Mr. Lilja stated that Mr. Jenkins authorized him to act in place of Dale Gardner who was previously authorized. Mr. Berkley asked Mr. Jenkins if he authorized Mr. Lilja to represent him in these proceedings; Mr. Jenkins confirmed that he did give that authorization.

Mr. Berkley stated that the Appeal Authority Bylaws identify the order in which presentations are made and that order is as follows; the petitioner reviews the information and facts included in the application and supporting evidence, the City Planner or designee gives evidence in support of the City, private citizens are then invited to make comment, and the Appeal Authority members may at any time ask questions. Due to this application being an appeal, Brigham City

requested the assistance of an attorney, Jon Bunderson, to help the members of the Appeal Authority. Mr. Berkley invited Mr. Bunderson to the table and asked him to explain what he had been asked to do. Mr. Bunderson said the basic purpose of his presence was the fact that this application is an appeal, which was a contested or disputed matter between Brigham City and McDonald's. The City staff typically advises the Appeal Authority but in this case, because of the fact the matter was contested and the Appeal Authority was acting as judges in the case, they were not in a position to ask City employees any questions or ask them for advice; which was the reason for Mr. Bunderson's presence. Mr. Berkley clarified that Mr. Bunderson would be the one the Appeal Authority members would consult with concerning legal questions on procedure and such. Mr. Bunderson agreed that Mr. Berkley's statement was correct as opposed to consulting with the City employees. Mr. Berkley asked if the McDonald's representatives were in agreement with that and they stated they were. Mr. Berkley stated their intent was to do that which was fitting and appropriate according to all the laws, rules, and regulations that exist.

Using a PowerPoint visual aid, Mr. Lilja presented their case. A copy of that PowerPoint presentation was placed in the permanent record. Mr. Lilja stated that this was an appeal to this authority from a decision that was made by Jeff Leishman and communicated to them in a letter dated January 09, 2009, which concerned the recently rebuilt McDonald's store located at 902 South Main Street. That rebuild was pursuant to a building permit that was obtained with regard to the building. The pole sign, which was constructed next to the building originally built in 1982, was not impacted in any way by the rebuild of the building. The sign was constructed without any variance. There was a request for a variance on height, which was denied. At that time, the pole sign, with regard to area, was not restricted and is currently a nonconforming use. Mr. Lilja stated that the sign was in no way involved in rebuilding the store. He gave an example of a variance granted to Shopko that was referred to as a huge variance in sign restrictions. There are other businesses in the same area that also have what they believe to be nonconforming uses under the sign ordinance such as Taco Time, Floribertos, Taco Bell/KFC, Arby's, and the Galaxy Motel. Mr. Lilja said their sign people looked at all the examples given and it was their view that all those signs appeared to be out of conformance with the restrictions under the sign ordinance.

Mr. Lilja said they want to add signage to the building. They are not talking about anything garish or out of line, just signage that one would expect to see. Using the visual aids, he pointed out the locations where they would like signage on and around the building. He said he noticed that when he was reviewing the square footage, Mr. Leishman and the McDonald's people had slightly different numbers with the footage but add up to about the same in the end and is not very significant. He said that in Mr. Leishman's decision of January 09, 2009, the method to calculate the signage was discussed and referred to the Brigham City Code. Mr. Lilja commented that there are two ways to calculate that, either by calculating it four times the linear feet of the building or twice the linear feet of the street frontage. Mr. Leishman calculated it with regard to both Main Street (330 square feet) and Fishburn (432 square feet) and decided to go with the 330 square feet as the total allowable signage, included in that were directional and informational signs. Mr. Lilja continued stating that Mr. Leishman determined that the requested signage for McDonald's was 693.18 square feet and included a 360 square foot area for the pole sign and 330 square feet for the building. What was determined to allow was 479 square feet and after deducting the pole sign there is 119 square feet left for use on the building.

A couple of variance applications were recognized in reaching that decision and Mr. Lilja noted variation number 348 from 1981. He said as he understood it, the requested variance was in regard to height so the sign could potentially be seen from the highway. There was no

restriction on the area of the sign but the increase in height was denied and the pole sign was erected without any variance being granted and has remained exactly as it is since 1982. The other variance that was referred to was number 522, which was granted in August 1996 for the play place signage and added six square feet to the building. That variance had nothing to do with the pole sign or the advertising on the pole sign. Mr. Lilja said Mr. Leishman's conclusion was to grant the 479 square feet less the 360 square feet for the pole sign for a total of 119 square feet and informed them that they could talk to the Appeal Authority if they did not agree with his decision. Mr. Lilja stated that they were here for that very purpose.

Mr. Lilja said that under the Brigham City code their pole sign is a separate nonconforming use and is a separate structure built pursuant to a separate building permit. The pole sign has never been modified and there is no request to modify it. He said it is not appropriate to include that pole in the calculation of the signage for the McDonald's building because it is a separate structure. Under Utah Law and the Utah Code, nonconforming uses are protected and it is not permissible to attempt to terminate a nonconforming use except by statute. The same is true under the Brigham City Code, section 29.06.140 which states that nonconforming signs are protected and may continue to be used. Mr. Lilja said that if one reads the sign provisions to include a pole sign, based on the strict language of the statute and 330 square feet, no other signage would be allowed for this store. He said the allowed square footage is insufficient signage and it appeared this was an effort to force McDonald's to change that pole sign and change that nonconforming use; he said he was certain that was not the intent of the City and that the City would not want to force McDonald's to do any such thing simply to put appropriate signage on the building.

Mr. Lilja summarized by saying that under the Brigham City ordinances the sign was a structure separate from the building. The sign is a legal nonconforming use separate from the building and is a use expressly recognized by Brigham City zoning. Because they are separate structures, legal nonconforming uses, the square footage of the pole sign cannot be used in calculating the square footage allowed for signage on the building. The proposed signage was shown as it will appear on the building which is very much in character with the area and very much conforming to the nature of the signage throughout the area and will add an additional 167 square feet.

Mr. Berkley stated that he agreed that the basic sign had not changed but there was a change that included Net Flicks, which was approximately one square foot. He said when they did one of the variations they indicated that if that pole sign was ever damaged or taken down it would have to be replaced with one that was more like 100 square feet. He asked if the reason the pole sign was a separate item and not part of the building was because it took a separate petition to put that sign up than what it took to do the building. Mr. Bunderson commented that what was quoted was correct in that the City code and sign ordinance allowed a separate freestanding sign to be a separate nonconforming use. He said the Appeal Authority had the authority to determine what is and is not a nonconforming use and suggested they listen to the City's argument about that before making a decision.

Jeff Leishman, Brigham City Associate Planner, and Kirk Morgan, City Attorney, came forward. Mr. Leishman handed out supplemental references to the codes that had been referred to by McDonald's. Mr. Morgan noted that all the exhibits Mr. Leishman had provided had been marked and McDonald's provided with copies of them. The McDonald's representatives agreed they received copies.

Mr. Leishman gave a history of what had happened to the property, prior to the building, from

1973 to 2009. Referring to an ordinance that was passed June 24, 1973, Mr. Leishman read three components that were relevant to this case. Chapter 29.16 referred to commercial and industrial districts. Chapter 29.17 referenced the central development district (CD) which the property was zoned prior to McDonald's being built; signs in that district were required to comply with Chapter 20. Chapter 20 had a permitted maximum cumulative sign area of four square feet of sign area for every one linear foot of building frontage or two square feet of sign area for every one linear foot of lot frontage, whichever is the least restrictive. There were different heights for freestanding signs in the different commercial and industrial areas.

Mr. Leishman explained exhibit B that defined the definitions and terms for signs in the CD district as of November 6, 1975. A freestanding sign was allowed to be 35-feet in height and had no limit in sign area. The fascia of the building had no limit for signage in regards to height.

Exhibit C was a copy of the logbook for the Board of Adjustment (Appeal Authority) which referenced the variances. Mr. Leishman said neither the minutes nor the applications could be found for them. He said he received testimony from Doug Wight who had been a member of the Board of Adjustment at that time. Mr. Wight recalled that the variance request for the sign was greater than 35-feet in height, which is the limit. They wanted the sign to be high enough so it could be seen from 1100 South. The variance request was denied. Exhibit D is a conditional use permit that was approved by the Planning Commission. In the minutes of that meeting it stated that pictures were presented of in-and-out type signs that would be around the store area. Exhibit E was the sign permit authorizing the signs to be placed on the property. Exhibit F is dated June 29, 1989, which is Ordinance 627 adopting a new Chapter 16. There are many similarities within that chapter other than the third and second to last pages that establish a sign ordinance for the commercial and industrial zones. Business signs are not to exceed a total of one square foot of sign area for each one linear foot of business building frontage and no such sign is to exceed 50 square feet in area and not more than three signs for any one business. All such signs are to be flat, wall, or freestanding.

Mr. Leishman stated that they had started out with an ordinance of four square feet for each one linear foot of building frontage. At that time, signs were very liberal. Pole signs were unlimited in area, and fascia signs were the face of the building. At this time, business signs are now one square foot of sign area for each one linear foot of business frontage with no sign to exceed 50 square feet in area and not more than three signs for any one business. Pole signs are now regulated to be 25-feet in height and 100 square feet in area. He said the maximum cumulative sign area probably became nonconforming at that time. The pole sign is 10-feet too high and should be 100 square feet when it is currently 360 square feet, which was at one time legal and is now noncompliant with the ordinance. That right is grandfathered, meaning it is a vested right.

Exhibit G amended and added to the definitions as well as deleted sign types and standards from the various district chapters and consolidated all the random ordinances that talk about signage and pull them into Chapter 20 so there is no conflict. Mr. Bunderson clarified that references to signs scattered throughout the zoning ordinances were all pulled out of the rest of the zoning ordinances and put into one chapter. Mr. Leishman replied that was correct.

Mr. Leishman added exhibit F.1 that talked about conflict, which basically said when there are ordinances that conflict the most restrictive shall prevail. He said that is where they concluded that everything was probably legal nonconforming because there can only be one square foot of sign area for every one linear foot of building frontage, which is 25 percent of what was allowed in a previous ordinance. In exhibit G, the ordinances were consolidated and brought into one.

The property had been rezoned to be CS, which is critical for applicable individual statute. In a CS district, the signs are listed and the cumulative maximum sign area can be used for one sign or divided amongst many signs. Due to the various changes in the ordinances, the pole sign is legal for height but nonconforming as to area, according to the new ordinance.

Mr. Leishman explained exhibit H, which was the variance request from McDonald's dated August 14, 1996. In that request, McDonald's withdrew the north and south signs for consideration, four signs were to be removed, and the new play place sign was to be installed on the front of the building which would increase the signage by six square feet. The condition placed on the variance was that if the pole sign was taken down for any reason it would have to be replaced with a sign that is compliant with the ordinance. The approval was conditional in that the 360 square foot pole sign could remain with the understanding that 113 feet of signage would be removed and there would be installation of a new play place sign on the east frontage of the building. The total allowed square footage was determined by looking at ~~the~~ all the exhibits and minutes.

Exhibit I was the actual permit that was issued for one sign on the east elevation of the building. Exhibit J, dated July 19, 2007, was a recodification of the codes, which stated that the cumulative sign area is for all signs on a property. The property was rezoned to GC and the current sign ordinance states that the maximum cumulative sign area is four square feet of sign area for every one linear foot of building frontage and two square feet of sign area for every one linear foot of lot frontage. Mr. Leishman stated that a property is vested, has a right, to have that much signage based on the current standard but he said they need to realize that the threshold had already been tampered with because there was legal signage that became nonconforming and then received a variance. On-premise signs are to be deducted from the maximum cumulative on premise sign area.

Mr. Leishman asked to add the building permit for the new McDonald's store as exhibit J.1 to the record. The permitted use permit, attached to the building permit, stated that the allowed signage was 330 square feet, which was not completely accurate, and required a separate sign permit for all signage on the property. A separate permit has been required aside from building permits for as long as Mr. Leishman has been working for the City, which is since 1985.

Exhibit K was the information received by Deanne Leatherman, YESCO Sign Company, regarding all the different signs and the site plans. Ms. Leatherman applied for a sign permit at the end of 2008 for signage for the new McDonald's store. Mr. Leishman said he talked to her and informed her that it appeared the signage was excessive and she told him she would get back with him to determine what to do. Mr. Leishman stated he started to do an evaluation on January 09, 2009. He supplemented the analysis with exhibits explaining the thought process he went through to reach his determination including what the property could support according to the ordinance. He calculated that they were asking for 693.18 square feet of signage, which included the pole sign, as well as all the other proposed signage. As per variance number 522, dated August 14, 1996, they were allowed 479 square feet of cumulative sign area rather ~~than~~ than the 330 square feet allowed by the current ordinance. The intent was to allow McDonald's to have the same area of signage that existed prior to the construction of the play place addition of 1996 plus six square feet as approved by the Board of Adjustment. He said the City was not going to take away anything from them that had been properly vested that was legal and lawful. His conclusion stated that the sign permit application was requesting more signage than was lawful for the City to approve and requested they amend their application so they would not have cumulative sign area that exceeds 479 square feet; since 360 square feet already existed on the pole sign the available balance was 119 square feet. Directional information signs are

also included within the 479 square foot cumulative sign area.

Exhibit L was part of a letter from Deanne Leatherman including pictures of the signs that McDonald's had chosen with additional signage requesting an additional 113.34 square feet of new signage including the pole sign for a total of 473.34 square feet. Ms. Leatherman asked for an addendum to the permit to include three more signs, which brought the total maximum cumulative sign area to 475.87 square feet. Mr. Leishman concluded that the maximum was 479 square feet, which was what that Board of Adjustment allowed them to have.

For illustrative purposes, Mr. Leishman added exhibit M, which was the Breitenbeker property located about a half block from the McDonald's property, and pointed out the similarities.

Mr. Morgan asked the members to turn to exhibit H. He stated that it had been said by McDonald's that the 1996 variance had nothing to do with the pole sign and it is the City's stance ~~is~~ that it had everything to do with the pole sign. He referred to a letter dated July 23, 1996 from YESCO Sign Company who was acting on behalf of McDonald's. The cumulative signage increased because they wanted to add additional signage on the play area. McDonald's position back in 1996 included the sign in their square footage. They did not argue the point that ~~that~~ the sign itself was a singular nonconforming sign. They just wanted an additional 149 feet. Nothing has changed since 1996.

Mr. Morgan said the City was not stating that they wanted to take back anything that had not been given to McDonald's in the 1996 Board of Adjustment hearing. The variance given at that time was conditional. The condition placed on this variance was if anything happened to bring the pole sign down it would have to be replaced with a sign that would comply. The approval was also conditional that the 360-foot pole sign may remain with the understanding that 113 feet of signage would be removed (in talking about the building) and there would be a new installation of play place signage on the east frontage of the building, which compromises 119 feet. The Board ruled that there would be an additional increase of a total of only six feet cumulative signage. Mr. Morgan stated that McDonald's had come back to say they had torn down the building and they not only want what they had for signage but an additional 200 feet from the conditional variance which would violate the terms of the variance established in 1996. He said they want to totally separate the pole sign from all consideration in the cumulative footage, which makes no sense in looking at their prior argument. The City's position was to give them exactly what was given in the variance and nothing more. Mr. Morgan said there had never been a situation where the City had treated that pole sign separately from the restaurant; it had always been the cumulative sign footage, which is why he felt the appeal should be denied.

Mr. Morgan clarified that there were two separate conditions placed on the pole sign when the variances were granted. The first condition is that if the sign ever comes down, the variance becomes void. The second condition is they have to reduce the total footage. It is the City's position that they never had a separate permit on the pole itself. He said that through the history, the entire restaurant was at one point nonconforming. The sign had never been separate from the restaurant. The two conditions are separate and cannot be combined if the sign comes down.

Mr. Poelman commented that they should realize the new establishment is more beautiful and attractive ~~then~~ than the previous one and it will be more beneficial to the City to accommodate the McDonald's people, having to do with the double drive-thru, which will benefit the City and the McDonald's ownership.

With regard to the letter from Deanne Leatherman dated January 14, 2009 that had the sign permit attached to it, Mr. Lilja stated that the City came up with the determination of 479 square feet. At that same time the store was opening and they needed to have signage so they chose some, which was additional signage they believed to be appropriate and should be added to it.

Concerning exhibit B, which is the ordinance that was in effect at the time the original building and sign were built, Mr. Lilja pointed out that the area attributed to freestanding signs was broken out from other types of signs. He said at the time that sign was constructed it was unlimited whereas the signage on the building had a different limitation; they were separate limitations. The freestanding sign has not changed but the signage on the building has. He commented that the City was not going to pay attention to that but rather apply the 2007 ordinance to the sign. Mr. Lilja said the City could not do that as it was a grandfathered use and they were trying to put a restriction on that grandfathered use. He said, under the law, they had to be treated separately.

With regard to the variance in exhibit H, Mr. Lilja said the pole sign was brought into that but the variance was really regarding signage on the building. He said the City did not include all the other signage in the calculation of the pole sign and the additional 119 square feet of additional signage. The play place signage alone is 119 square feet, which Mr. Lilja said assumed that there was no other signage on the building at the time, when clearly there was. At that point in time, directional and informational signage was not included in the square footage. The 479 square foot calculation is really the pole sign plus the 119 square foot play place sign, which is why Mr. Lilja thought it was appropriate to look at it as two separate things. He said what they were asking for was 333 square feet of signage for the building itself.

Ms. Peterson commented that she identified several McDonald's signs that she felt were necessary due to their double frontage issue with being located on a corner lot. The welcome sign would not be necessary if they did not need to indicate where people needed to enter. The extra McDonald's sign needed to be there because of the two frontages. She asked if there was a way for them to accommodate the dual frontage issue, especially with it being located on two busy roads.

Mr. Leishman read definition 29.020.20 Lot Line Front from the general zoning ordinance. *For a corner lot or through lot, the lot line adjoining either street adjacent to the architectural front or main entry, the lot line front shall be used for address designation. A corner lot only has one frontage.* He said the frontage occurs at the architectural front of the building, which is why he stated in his memorandum that they could look at Main Street or Fishburn but not both. Mr. Leishman said he did not know of any information specific for a sign on a corner lot. With that being the case, Ms. Peterson asked if they could consider this a special circumstance. Mr. Leishman replied they needed to be careful with that and gave an example of Smith's Foods in that they have frontage on all four streets. In their sign package, Main Street was designated as their frontage to that property. He said the ordinance gives the property a certain allotment of signage based on that frontage.

Mr. Randall asked if the amount of signage proposed, without the freestanding sign, complied with the maximum square footage. He asked what the City would expect McDonald's to do if the appeal was denied. Ms. Peterson commented that the square footage was inadequate for what they have there. Mr. Lilja added that under variance number 522 it was clear that the square footage allowed was well in excess of 479 square feet because all that had been counted was the freestanding sign and the play place sign. The menu boards are counted as

directional information signs.

Mr. Berkley commented that they had many other signs and if they are only including the pole sign and the play place sign they have neglected many other signs that were there; the entrance signs may not have been included previously but they are now. Mr. Leishman said in the minutes it talked about the removal of three small signs, which could have been the small directional signs. It was clarified that if this board did not grant an appeal the next step would be to the District Court.

Mr. Bunderson stated that the maximum allowed under the current ordinance was 330 square feet and he asked if there was a way McDonald's could give up three square feet of signage on the building so they would fit at 330 square feet on the building and the freestanding sign. Mr. Lilja replied that they could do that. He said if they were permitted 330 square feet of signage on the building they would be certain to come within that. Mr. Berkley asked if the empty open space within the arches of the pole sign was counted toward the square footage. The calculation process was discussed. According to Chapter 29.27.010 Definition Sign Area it was determined that the calculation used should be computed based on the least rectangle, triangle, or circle large enough to frame the display.

Mr. Bunderson stated that the Appeal Authority was acting in a quasi-judicial manner and as such, they serve as the final arbiter of issues involving the interpretation or application of land use ordinances. He said they get to make the decision and they are not necessarily bound by the decisions the City made or by their findings of fact. They get to look at the facts and make a decision. They are entitled to determine what, if any part of this situation, is a preexisting nonconforming use and are entitled to make a new decision. Mr. Bunderson said this was a *denovo* type of appeal unless the City ordinance provided a different standard, which he did not see, because they may reverse or affirm wholly or partly or make whatever decision ought to be made. They should include in the motion whatever findings of fact that are seen to be factual, important, and appropriate.

Mr. Berkley invited those in the audience to make comment if they so desired.

Holly Bell came forward and stated that she is a citizen of Brigham City. As a landowner in the southwest section of Brigham City, she said that over the years she has felt they have had an increase of traffic from when McDonald's was first built. They have used the same curb cuttings that existed at that time and now they have many more vehicles going in and out of there. She said that the signs indicating safety and direction are very important and for the safety of the Brigham City residents she felt that, in light of the importance of those safety signs even though the ordinance calls for all signs to be put together, they need to realize that directional signs are very important and should be looked at as a possible consideration of what is done in the final outcome of this appeal.

**MOTION:** A motion was made by Marilyn Peterson to approve the appeal application #618 appeal from the Zoning Administrator's decision applying the zoning ordinance to McDonald's at 36 South State Street, Salt Lake City, their physical address is 902 South Main in Brigham City. The appeal rests on the fact that there is a freestanding sign that was preexisting nonconforming. With that not the consideration for signage use, that would allow McDonald's to have 330 square feet of allowable current sign which does make it

conforming within Brigham City ordinance if it is considered by itself without the freestanding sign. The motion was seconded by Jaye Poelman.

Discussion: Barbara Stokes proposed to modify the motion to state the sign as being legal nonconforming.

Ms. Peterson moved to modify her motion as suggested by Ms. Stokes. The motion was seconded by Mr. Poelman and passed unanimously.

Discussion: Mr. Bunderson commented that he thought what had been said were the proper findings in how it should be stated. Ms. Peterson moved to add to her motion that the legal nonconforming sign pertains just to that sign and does not pertain to any new freestanding signs; just to the preexisting nonconforming pole sign as it currently is so the nonconformance is not expanded any further. Mr. Bunderson said he thought they all understood that what they are voting for and approving is simply saying that the freestanding pole sign is being considered and determined to be a legal preexisting nonconforming use and, because of that, is not to be included in the 330 square foot requirement.

Mr. Berkley asked if everyone was in favor of what the attorney has counseled and asked for a vote. All voted affirmatively.

The motion to approve the appeal as stated passed unanimously.

Mr. Bunderson added that if the City were to appeal, his suggestion was that they do so within 30 days of this date. Mr. Berkley added that anyone could file an appeal to this decision with the District Court within 30 days of this date.

**MOTION:** A motion was made by Barbara Stokes to adjourn. The motion was seconded by Jaye Poelman and passed unanimously.

The meeting adjourned at 7:53 p.m.

*This certifies that the minutes of March 11, 2009 are a true and correct copy as approved by the Appeal Authority on May 13, 2009.*

Signed: \_\_\_\_\_  
Jeffery R Leishman - Secretary