

The City broke a "law" that *they* put on the books. Now they want to change that law to make their behavior legal.

Concludes on page 4

A lot of naive, and some subservient, residents believe that if anyone is going to obey the law, it would be the governmental entity that made that law. Or at least they hope that would happen.

Of course, that's not true. They don't.

One of the reasons is that those same people don't know what law they passed pertaining to any subject. And often they just approve a law, ordinance, city code, etc., to feel better about themselves - based on no real principle or conviction.

Like the downtown garage. The city council president at the time explained it simply: "Well, we have to do something."

No, you don't. Speaking on behalf of Cheyenne and Laramie County residents, when you get close to adding to the ordinances or city code, don't do it. Just sit on your hands, collect the now sizeable paycheck to the mayor and the more modest one to council members.

Just sit on your hands.

For those who don't think city code is the equivalent of law, think again. Read through it and see how many times you'll find the words, "and a fine of up to \$750."

Here's a classic example when everybody would have been better served had the city council just sat on their hands.

In an effort to make the sign ordinance more draconian than before but having a city attorney who had no clue how to word things to accomplish the intended result, the '06 city council banned additional billboards within the "zoned area" (basically the city and nearby county).

When residents complained about a new, illuminated billboard that had been permitted and constructed near their bedroom windows, the city went into the normal defensive mode. Richard Nixon-esque: "When the city council does something, it is not illegal."

Who can forget the repeated illegal annexations approved by this same group? Those illegal acts cost taxpayers \$300,000 in outside attorney fees.

When this new billboard on Pershing was built and residents challenged its legality based on the plain language of city code - revised by these characters in 2006 to ban further billboards - the defensive mechanism of the city immediately kicked in. This defense is being provided by a Laramie law firm, and a thorough review of *Cox v. City of Cheyenne* appears not to have been done.

NextMedia is the billboard company and they joined in the "wah, wah, wah!" defense of this illegal action. It would seem they should be dismissed from the lawsuit on the basis that they had applied

for the necessary permit and the city development office approved it. But, in Cheyenne at this point in time, it is a requirement of the resident or contractor to know the laws / ordinances better than the city itself does. That seems a little bassackward.

An amusing whine by NextMedia (by a junior member of a familiar local law firm) was that the Plaintiffs had referred to the billboard as "ugly." That was offensive to this defendant and NextMedia wanted that stricken. Like that will have a bearing on the ultimate decision. Ugly is in the eye of the beholder. Like the sculpture on Storey Blvd. Even the NextMedia attorney might agree that is ugly.

Another interesting thing about this legal dispute is that, even though it has been brewing for going on a year, the Court has made no rulings on several legal Motions. At one point, Judge Ed Grant handed it off to another District Court Judge. Thank you, Judge Grant. It's pretty obvious at this point that you're biased toward the City and the Supreme Court has to keep slapping down your decisions. Judge Keith Kautz from Torrington now handles the case.

The basics of the dispute:

City Code 17.128.090 Prohibited Signs.

The following signs are prohibited in all zoning districts:
(G) Off-premise signs;

That follows these two set-up Sections:

17.128.010 General provisions on billboard signs.

There shall be no increase in the overall number of billboard signs within the zoned area.

17.128.020 Purpose and Authority.

The purpose of these standards is to encourage the effective use of signs as a means of communication in the zoned area; ... to minimize the adverse effects of signs on nearby public and private property;

It is obvious to most that the city council, when they made the "modifications" in 2006, intended to tighten up on the unsightly, often tattered or unused billboards that have invaded the city and nearby interstates. And that one consideration was "the adverse effect of signs on nearby ... private property."

Now, remember, this is the same group that approved rezoning land on Dell Range and Prairie which would have enabled a 24/7 Walgreen's to be built in an established residential neighborhood. That was prevented by the neighbors threat to enforce restrictive covenants, not because the city council protected nearby

homeowners. Anything the inexperienced litter of ten imagines to be "economic development" will be approved or condoned - neighbors and other property owners be damned.

As though a sign is somehow always inoffensive, no notice is required to neighbors before a permit is issued to build these monstrosities. How would you like one of those babies down on I-25 at the state line over your bedroom window?

When neighbors noticed construction about to start, one of them (helpfully, an attorney) questioned what was happening. He then scheduled a meeting with the Cheyenne Development Office (from where such permits are issued) and later with the City Attorney. A meeting occurred on February 6, 2008 - after the contact had been made on January 26, 2008.

At that meeting, the neighbor was told "the applicable Cheyenne ordinance was a 'mistake' and that the ordinance did not prohibit the permitting or building of new billboards in Cheyenne."

Boy, it sure looks like that was the intent.

"Off-premise signs" are defined as:

17.04.040 Definitions.

43. Off-premise sign. See "Billboard."

44. "On-premise sign" means a sign which pertains to the use of the premises and/or property on which it is located.

9. "Billboard" means a sign structure advertising an establishment, a message, merchandise, service or entertainment which is not located, sold, produced, manufactured or furnished at the property on which the sign is located.

In some very clumsy language, what the city is saying is that a billboard advertising something other than for the business on whose property the billboard is located, is an "Off-premise sign" and is prohibited in the zoned areas (all of the City of Cheyenne and nearby county land), according to 17.128.090.

The mammoth billboard in question does not advertise Lennox Auto Body, the business under it and on whose property the billboard has been placed. At this date, it has messages about the reduction in meth arrests (not "use," as it claims) on one side and one about step-families on the other.

At the meeting on February 6, city officials told the neighbor they would not rescind the (improperly issued) permit to construct the billboard. A neighbor questioned those of the Development Office (including its Director, who was at the meeting) about a timely appeal.

In an e-mail the following day, a representative of the Development Office responded to that concern. A copy of that e-mail was also provided to the Director of the Department. I have a copy.

The writer informed the neighbor that there were "two sections on appeals." He then specified which would apply to this matter. "The second type of appeal and the one that we are dealing with is found in 17.148.050." Later in that paragraph, he wrote: "There is not a restriction on time limit with this type of appeal."

That response was dismissed when the neighbors objected to the issuance of that permit. The City came back at them with their usual "untimely" defense. Government's primary defenses when challenged by a resident are often to "wear them down," ... "spend them broke." If there is any way to tell residents, "you didn't appeal in time," that is used.

Even though the neighbors had been told there was no hurry in making an appeal, they were concerned about timeliness and filed an appeal within 14 days.

The appeal was heard by Cheyenne's infamous "Board of Adjustment." (*This is a Board that once allowed its chair to preside on a matter he could [and would] personally benefit financially, depending on the decision. He led the discussion, only to lose the vote.*) With only four of the seven Board members present, the Board voted 2-2 on this appeal and the tie vote denied the appeal.

A re-hearing of this appeal was held later, with more BoA members present. It was again denied but some of the comments in the decision letter are incredible. The members of this Board are usually very unqualified - their basic qualification is a willingness to serve - and it shows in this decision letter.

The denial says first that "no written notice is required to be provided to adjacent property owners." True. But unreasonable in this case. Then, it was noted that appellants "reside on residential property that is adjacent ..." to where the billboard was put. *Actually, some are contiguous, some are adjacent.*

Then, the punch line: "Appellants acquired actual notice of the billboard's construction on or about January 16, 2008, when they observed the erection of the sign." What? "Actual notice" is when you see something being done? Then, in a deliberately devious omission, the letter said: "Emails were exchanged between Appellants and the City Development Office on February 7, 2008 related to time limitations of appeals from actions of the Development Director." That's it. Nothing about neighbors being told there was no time limit to appeal. The writer of this response is dishonest and should be removed from the Board of Adjustment.

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Distracted driver ordinance has gone overboard

It is time to pull the plug on the well-meaning, albeit it unenforceable and too invasive ordinance to take cell phones out of the hands of drivers in Cheyenne.

As Floyd Esquibel has found in the Wyoming Legislature, the language that will satisfy even those who support such a move is elusive.

From a straightforward, "let's take cell phones out of the hands of people driving," the ordinance has morphed into an overly broad, unnecessarily restrictive effort to require drivers to look straight ahead because any other activity on their part while they're driving could be deemed to be "distractive."

I know a guy who was rear-ended by a young woman who was busily talking on her cell phone and that by itself is almost enough for me to support an over-reaching ordinance now being discussed. But to add one more ordinance on the books that will be unenforceable and unenforced isn't going to do us any good. Deal with cell phones only and call me. No cell phone use while driving.

The first conviction will bring a reversal because the ordinance is vague - the definition of distracted driving is ambiguous. There are so many things other than those described that could be defined as distractive and so many of those named will be determined not to be distractive under every circumstance.

The subjective determination by a police officer will lead to the department not enforcing any part of the distractive driving ordinance - not even the portion that a majority of the residents might support - a cell phone ban. By broadening the

law to include undefinable "distracted" driving, everything will be lost.

CPD talking head Mark Munari says he knows 200 accidents were caused by cell phone use. Can he provide specifics? Of course not. There are no such records. Has he provided any facts about accidents caused by shaving, putting on make-up, breast feeding a baby, or switching a CD or cassette? And if there are no reported accidents attributed to eating french fries, why should all eating be prohibited? Sucking on a sore throat lozenge could be considered eating.

Former Laramie County Sheriff Pat Barrett has communicated his opposition of the ordinance to its sponsor, Jim Brown and three leading council members (Pierson, Collins and Rinne). Among Pat's advice to those four: "The proposed cell phone ordinance is, in my humble opinion, a waste of time and ridiculous on its face." And, "would not the offending arch-criminal have to admit to the police officer just exactly what it was that distracted him or her? I mean distracted is distracted right? 'What made ya do it, lady?' And for Mark Munari to say that 200 accidents were caused by distracted drivers means what? Mr. Brown reads an article that says 25% of distracted driving accidents involve cell phones. I hope the CPD or DOT has these statistics." Pat also opines that Cheyenne police officers "want nothing to do with this boondoggle."

Pat Barrett hit the nail on the head. Jim Brown, don't try to salvage this Rube Goldberg ordinance. It has morphed into bad law. Withdraw it. Don't put another "dogs in the box" law on the books. Subjective laws are a poor idea.

Downtown Decimation Authority (DDA)

Amazingly, the destruction of downtown coincides with three other events.

- 1.) The DDA began to receive an obscene and unwarranted amount of money; and
- 2.) The DDA hired a full-time director; and
3. The arrival of Tom Segrave.

Before 2001, the DDA "struggled by" with about \$280,000 in annual revenue. Now, they are gifted about \$615,000 a year (excluding what they get from subleasing parking spaces in the downtown garage).

As of February 28, 2009, the DDA had \$680,000 of ready cash. Yet, nothing positive is happening in the downtown. In fact, the decimation continues with the demolition of an office building at 17th and Warren and the displacement of Stride Learning Center.

Thousands of brick pavers have found a home at the west end of the unused 15th surface parking lot. They came from the necessary removal along many downtown streets. What this group does often has to be undone. "Trees" are often nothing more than sticks protruding from

the ground. Lifeless and dangerous, these sticks could inflict serious injuries to anyone falling onto them.

Minutes of a recent DDA meeting reflect that a "Business Development" committee of Tom Segrave, Bob Bradshaw and Sami Falzone "reported that the task force committee was working closely with GSA and several developers to get the empty buildings in downtown occupied." Puhleezee!

Segrave sat listless and lifeless on the City Council for eight years while the downtown emptied. It emptied! He has his own business far out on Yellowstone. What the hell could he offer to recruiting new tenants for the downtown? Bradshaw and Falzone also have no experience in retail or leasing. Boy, talk about the inept leading the inept. This is a need that demands better leadership. Before joining the City Council, Segrave was a director on a Joint Powers Board that spent millions and accomplished nothing toward establishing a "World Class Transportation Museum" in the former UP depot. He has no discernible success record. None.

Sign ordinance change (Continued from page 12)

At the same time the City is defending its illegal action in approving a permit to erect a prohibited billboard at Pershing and Seymour, they are attempting to change the language of the Section of City Code they violated. A meeting of the Regional Planning Commission on April 9 will begin the process.

The notice for the meeting states the purpose is amending Title 17, Zoning, "by changing the definition of Off-premise sign in Section 17.04.040 and by adding additional language to Section 17.128.090 G, Off-premise signs."

City Code Section 17.148.100 now reads: "In case of a conflict between this zoning ordinance or any part of this ordinance, and any part of any other existing or **FUTURE ADOPTED ORDINANCE** of Cheyenne, Wyoming, or adopted resolution of Laramie County, Wyoming, the more restrictive provision in all cases shall apply." A new rule or new language won't get them off the hook. *(Bold mine)*

At one point in this dispute, former city attorney Claudia Angelos drafted the most impressive looking Motion to Dismiss. Her problem was that she objected to claims not stated in the Plaintiffs pleading. Once replaced by WARM attorneys (although this litigation is not about monetary damages), a Stipulated Disposition Regarding Motion to Dismiss dismissed her motion to dismiss.

This case is not about money. It is about a declaratory judgment which would require the permit to be rescinded and the billboard to be removed. *Void ab initio (I love those words!)*. So, it seems that even if the latest City ploy to change the zoning language after the fact is successful, that won't affect the litigation filed before the change was made. And if declaratory judgment is granted, the billboard has to come down. Could it be reconstructed? That would probably depend on the Court's ruling.

As the case plodded along, interesting

legal stunts have surfaced. Attorneys for NextMedia once filed a very bizarre motion. In that motion, they used the "I beg the Court for mercy for I am an orphan," defense after killing the parents. NextMedia said that if the Court found in favor of the Plaintiffs, the Defendant would be harmed. And, with that loss, the Plaintiffs should be responsible for those damages to the Defendant. Interesting twist. What that says is, "If we have to remove the billboard because the Plaintiffs proves we shouldn't have constructed it, it will cost us money and the Plaintiffs should have to pay us those costs." Even though the Court hasn't ruled on any of the motions to this date, that one will be easy. Plaintiffs: The loser is not entitled to come out the winner.

The City hopes to convince the District Court that what they "meant" should trump what they "did." The Wyoming Supreme Court has repeatedly stated: "If the language is sufficiently clear, we do not resort to the rules of construction." What the City said, regardless of what they may have *meant* or *intended* to do, was that no additional billboard could be built in the "zoned area" of the district.

The City has used every stalling tactic they could think of - very reminiscent of the *Cox v. City of Cheyenne* and *Cotton v. City of Cheyenne*. Throw a bunch against the wall and see what sticks. They lost both of those cases. They've tried to prevent the Plaintiffs use of declaratory judgment - the same unsuccessful tactic they attempted in *Cox v. City of Cheyenne*. There are similarities between *Cox* and this case. These neighbors are aggrieved parties to an illegal act by the City. The Supreme Court wrote in *Cox*, as to whether a declaratory judgment action is available to Plaintiffs: "A municipality has only the rights and powers granted by statute. Individuals are not similarly limited. Individuals have rights and powers independent of those created by statute." And, "... therefore, the declaratory judgments act is to be liberally construed and administered."

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