



CITY COUNCIL WORK SESSION

Awet Eyasu – Vice-Mayor

*Jamie Carroll
Ahmed Hassan*

*Laura Hopkins
Debra Johnson*

Robin Gomez – City Manager

AGENDA

Tuesday, September 29, 2020 7:00PM

A. ROLL CALL

B. WORK SESSION - RESIDENT COMMENT POLICY

Any member of the public may address questions or comments to the Council referencing only agenda items after the Mayor and council have had the opportunity to discuss the agenda item. Each Attendee will be allowed 3 minutes for comments at the discretion of the Presiding Officer. Attendees will be asked to conclude their comments in a reasonable time period if they exceed the 3 minute limit.

C. PRESENTATION/ ADMINISTRATIVE BUSINESS

D. OLD BUSINESS

E. NEW BUSINESS

E1) Discuss amending Section 13-3 of the Municipal Code

E2) Discuss Appointing a Council member to the Vacant Seat on DDA.

E3) Discuss Plantings in the open field and pollinator garden in Friendship Forest

E4) Discuss All park signage be written and coordinated by a park management professional, naturalist interpreter or someone with content knowledge in environmental studies, natural sciences such as watersheds, ecology, or zoology as well as park management.

E5) Discuss an Update to ordinance where land disturbance and stream buffers are concerned to increase undisturbed buffers from 50 ft to 75 ft

E6) Approve a Resolution declaring October as Domestic Violence Awareness Month in the City of Clarkston

E7) Approve Alcohol Package Store License application Lulu's Package

E8) Adopt a Resolution authorizing the City's Adoption of the DeKalb County Pre-Disaster Hazard Mitigation Plan

E9) Appeal of City Denial of Sign Permit Application from Railroad Outdoor LLC, to Erect a 14' x 48' FF 20' VEE @ 50' OAH Billboard Sign on the Property Located at 3611 Church Street

E10) Appeal of City Denial of Sign Permit Application from Railroad Outdoor LLC, to Erect a 14' x 48' FF 20' VEE @ 50' OAH Billboard Sign on the Property Located at 3874 E Ponce de Leon Ave.

E11) Appeal of City Denial of Sign Permit Application from Railroad Outdoor LLC, to Erect a 14' x 48' FF 20' VEE @ 50' OAH Billboard Sign on the Property Located at the southerly portion of Church St, just outside (East) of I-285.

E12) Appeal of City Denial of Sign Permit Application from Railroad Outdoor LLC, to Erect a 14' x 48' FF 20' VEE @ 50' OAH Billboard Sign on the Property Located at the southerly portion of Church St, just inside (West) of I-285.

F. ADJOURNMENT

CITY OF CLARKSTON

ITEM NO: E1

CLARKSTON CITY COUNCIL MEETING

HEARING TYPE:
Work Session

BUSINESS AGENDA / MINUTES

ACTION TYPE:
Resolution

MEETING DATE: September 29, 2020

SUBJECT: Discuss Amending Section 13-3 of the Municipal Code

DEPARTMENT: City Administration

PUBLIC HEARING: YES NO

ATTACHMENT: YES NO
Pages:

INFORMATION CONTACT: Debra Johnson, Awet Eyasu
PHONE NUMBER: 404-296-6489

PURPOSE:

Discuss the amending Section 13-3 from the Municipal Code

NEED/IMPACT:

Section 13-3 was adopted in 1991 to provide for Restriction on the use of certain athletic parks. The full section 13-3 is cited below:

- (a) It shall be unlawful for any person over the age of twelve (12) years to use the athletic field in Milam Park in the city which lies contiguous to Norman Road for the purpose of playing baseball or softball.
- (b) For the purposes of this section, one shall be considered as playing baseball or softball if he is a participant on a team which is playing or practicing baseball or softball on said field or if he strikes a baseball or softball with a bat while located on that field or throws a baseball or softball on that field; provided, however, nothing contained herein shall preclude any person who is acting as a coach for children twelve (12) years old and under to participate in coaching drills with such children.
- (c) The city shall post signs at the subject field to inform the public of the restrictions as set forth in this section.
- (d) Any person who shall be in violation of this section shall be punished in accordance with section 1-7 of this Code.

Council to consider amending section 13-3 to remove from paragraph (b) the reference to "throws a baseball or softball on that field," and to add the phrase "For the protection of park visitors on the playground, dog park and swimming pool," ahead of section (a).

RECOMENDATION

Staff has no recommendation.

ORDINANCE NO. _____

AN ORDINANCE BY THE CLARKSTON CITY COUNCIL TO AMEND CHAPTER 13 OF THE CITY CODE, CONCERNING PARKS AND RECREATION, TO CLARIFY RESTRICTIONS ON PLAYING BASEBALL OR SOFTBALL AT MILAM PARK.

WHEREAS, the City Council desires to clarify and better explain the restrictions on playing baseball or softball at Milam Park.

NOW THEREFORE, BE IT ORDAINED by the Clarkston City Council as follows:

SECTION ONE

City Code Section 13-3 is hereby repealed and replaced with the following text:

“Sec. 13-3. - Restriction on the use of certain athletic parks.

- (a) In order to protect park visitors making use of the playground, dog park and swimming pool at Milam Park, it shall be unlawful for any person over the age of twelve (12) years to use the athletic field in Milam Park for the purpose of playing baseball or softball.
- (b) For the purposes of this section, a person shall be considered to be “playing baseball or softball” if he or she is a participant on a team which is playing or practicing baseball or softball on said field, or if he or she strikes a baseball or softball with a bat while located on that field. Throwing a baseball or softball on that field shall not constitute “playing baseball or softball” so long as such throwing is not part of an organized game or practice.
- (c) The forgoing notwithstanding, this section is not intended to prohibit any person who is acting as a coach for children twelve (12) years old and under from participating in coaching drills with such children.
- (d) The city manager shall cause signs to be posted at the subject field at Milam Park to inform the public of the restrictions as set forth in this section.
- (e) Any person who shall be in violation of this section shall be punished in accordance with section 1-7 of this Code.”

SECTION TWO

This Ordinance shall become effective upon the date of its adoption by the City Council. Any provision of any ordinance in conflict herewith is hereby repealed.

[signature page follows]

SO ORDAINED, this ___ day of _____, 2020.

CITY COUNCIL, CITY OF CLARKSTON, GEORGIA

Awet Eyasu, Vice Mayor

Attest:

Tracy Ashby, City Clerk

Approved as to Form:

Stephen G. Quinn
Stephen Quinn, City Attorney

CITY OF CLARKSTON

CLARKSTON CITY COUNCIL MEETING

BUSINESS AGENDA / MINUTES

MEETING DATE: September 29, 2020

ITEM NO: E2

ACTION TYPE:
CDA APPOINTMENT

HEARING TYPE:
Work Session

SUBJECT: Discuss Appointing a Council member to the Vacant Seat on DDA

DEPARTMENT: City Administration

PUBLIC HEARING: YES NO

ATTACHMENT: YES NO
Pages: 2

INFORMATION CONTACT: Awet Eyasu, Jamie Carroll
PHONE NUMBER: 404-296-6489

PURPOSE: To discuss filling the vacant Clarkston Development Authority seat of former Council Member YT Bell.

NEED/ IMPACT: At the December 3, 2019 Council Meeting, YT Bell was appointed to serve a two year term on the Clarkston Development Authority. On August 12, 2020, YT Bell qualified as a candidate for the Clarkston Mayor Special Election and vacated her Council Seat.

RECOMMENDATION: Council to consider appointing a new CDA member.

CITY OF CLARKSTON

ITEM NO: E3

CLARKSTON CITY COUNCIL MEETING

HEARING TYPE:
Work Session

BUSINESS AGENDA / MINUTES

ACTION TYPE:
Resolution

MEETING DATE: September 29, 2020

SUBJECT: Discuss Plantings in the open field and pollinator garden in Friendship Forest

DEPARTMENT: City Administration

PUBLIC HEARING: YES NO

ATTACHMENT: YES NO
Pages:

INFORMATION CONTACT: Awet Eyasu, Laura Hopkins
PHONE NUMBER: 404-296-6489

PURPOSE:

Discuss Plantings in the open field and pollinator garden in Friendship Forest

RECOMENDATION

Staff has no recommendation.

CITY OF CLARKSTON

ITEM NO: E4

CLARKSTON CITY COUNCIL MEETING

HEARING TYPE:
Work Session

BUSINESS AGENDA / MINUTES

ACTION TYPE:
Resolution

MEETING DATE: September 29, 2020

SUBJECT Discuss all park signage be written and coordinated by a park management professional, naturalist interpreter or someone with content knowledge in environmental studies, natural sciences such as watersheds, ecology, or zoology as well as park management.

DEPARTMENT: City Administration

PUBLIC HEARING: YES NO

ATTACHMENT: YES NO
Pages:

INFORMATION CONTACT: Awet Eyasu, Laura Hopkins
PHONE NUMBER: 404-296-6489

PURPOSE:

Discuss all park signage be written and coordinated by a park management professional, naturalist interpreter or someone with content knowledge in environmental studies, natural sciences such as watersheds, ecology, or zoology as well as park management.

RECOMENDATION

Staff has no recommendation.

E4. Recommend that all park signage be written and coordinated by a park management professional, naturalist interpreter or someone with content knowledge in environmental studies, natural sciences such as watersheds, ecology, or zoology as well as park management

<https://www.nps.gov/idp/interp/101/FoundationsCurriculum.pdf>

“There are essentially two ways to deliver interpretation: personal services and media (non-personal) services. Personal services provide opportunities for visitors to interact with an interpreter in person. They include such things as informal contacts, talks, guided walks and demonstrations. However, personal services reach only as much as 22% of the visitors. In contrast over 62% of visitors receive interpretation through media services such as brochures, newspapers, audio tours and exhibit labels. Regardless of the type of interpretative service being provided, the definition of interpretation remains the same for both (Visitor Use and Evaluation of Interpretive Media, 2003).

So what is interpretation? It is a bridge between the meanings of the resources and interests of the visitors. It connects the tangible artifacts, collections or natural resources of a site to the intangible concepts they can represent.”

Park Signage Resources: <https://panniergraphics.com/>

CITY OF CLARKSTON

ITEM NO: E5

CLARKSTON CITY COUNCIL MEETING

HEARING TYPE:
Work Session

BUSINESS AGENDA / MINUTES

ACTION TYPE:
Resolution

MEETING DATE: September 29, 2020

SUBJECT Discuss an Update to ordinance where land disturbance and stream buffers are concerned to increase undisturbed buffers from 50 ft to 75 ft

DEPARTMENT: City Administration

PUBLIC HEARING: YES NO

ATTACHMENT: YES NO
Pages:

INFORMATION CONTACT: Awet Eyasu, Laura Hopkins
PHONE NUMBER: 404-296-6489

PURPOSE:

Discuss an Update to ordinance where land disturbance and stream buffers are concerned to increase undisturbed buffers from 50 ft to 75 ft

RECOMENDATION

Staff has no recommendation.

CITY OF CLARKSTON

ITEM NO: E6

CLARKSTON CITY COUNCIL MEETING

ACTION TYPE:
RESOLUTION

HEARING TYPE:
Work Session

BUSINESS AGENDA / MINUTES

MEETING DATE: September 29, 2020

SUBJECT: Approve a Resolution declaring October as Domestic Violence Awareness Month in the City of Clarkston.

DEPARTMENT: City Administration

PUBLIC HEARING: YES NO

ATTACHMENT: YES NO
Pages: 1

INFORMATION CONTACT: DEBRA JOHNSON,
PHONE NUMBER: 404-296-6489

PURPOSE: City Council to adopt a resolution declaring October as Domestic Violence Awareness Month in the City of Clarkston.

BACKGROUND/IMPACT:

The City of Clarkston joins other cities and local governments across our country in supporting victims of domestic violence and sharing the worthy goals of this month long observance including the continued support for the work of public and private agencies and organizations that strive to provide the best coordinated responses to domestic violence sending a loud and clear message to abusers that domestic violence is not and will not be tolerated in the City of Clarkston.

Domestic violence poisons relationships, destroys lives, and shatters the bedrock of our society — the family. Homes should be places of comfort and stability where love and mutual respect thrive. Domestic violence erodes this environment, leaving many Americans in potentially life-threatening situations. As a Nation, we must resolve to have zero tolerance for acts of domestic violence. During National Domestic Violence Awareness Month, we reaffirm our steadfast commitment to empowering survivors and ending this deeply destructive abuse – Federal Proclamation on National Domestic Violence Awareness Month.

RESOLUTION NO. _____

A RESOLUTION BY THE CITY OF CLARKSTON DECLARING OCTOBER AS DOMESTIC VIOLENCE AWARENESS MONTH IN THE CITY OF CLARKSTON.

WHEREAS, domestic violence is a serious crime that affects people of all races, ages, gender, and income levels; and

WHEREAS, domestic violence is widespread and affects over 4 million Americans each year; and

WHEREAS, 1 in 3 Americans have witnessed an incident of domestic violence; and

WHEREAS, on average, nearly 20 people per minute are physically abused by an intimate partner in the US, during one year, this equates to more than 10 million men and women; and

WHEREAS, 1 in 4 women, and 1 in 7 men have been victims of sever physical violence such as beatings, burnings, strangling, etc., by an intimate partner in their lifetime; and

WHEREAS, children that grow up in homes with violent acts and behaviors are believed to be abused and neglected at a rate higher than the national average; and

WHEREAS, domestic violence costs our country billions of dollars annually in medical expenses, police and court costs, shelters, foster care, sick leave, absenteeism, mental illness, and non-productivity; and

WHEREAS, only a comprehensive and coordinated community effort will help put a stop to this most heinous crime; and

WHEREAS, Domestic Violence Awareness Month provides an excellent opportunity for residents to learn more about preventing domestic violence and to show support for the numerous organizations and individuals who provide critical advocacy, services, and assistance to victims; and

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Clarkston, Georgia hereby adopts this Resolution declaring October as Domestic Violence Awareness Month in the City of Clarkston, GA. and the City of Clarkston will host an annual event in remembrance of the survivors of Domestic Violence each year, and publicize prevention awareness resources & materials on the City Website.

SO RESOLVED, this _____ day of _____, 2020.

CITY COUNCIL, CITY OF CLARKSTON, GEORGIA

Awet Eyasu, Vice Mayor

Attest:

Tracy Ashby, City Clerk

CITY OF CLARKSTON

CLARKSTON CITY COUNCIL MEETING

ITEM NO: E7

HEARING TYPE:
Work Session

BUSINESS AGENDA / MINUTES

ACTION TYPE:
Resolution

MEETING DATE: September 29, 2020

SUBJECT: To consider a new alcohol beverage license application.

DEPARTMENT: Alcohol Review Committee

PUBLIC HEARING: YES NO

ATTACHMENT: YES NO
Pages:

INFORMATION CONTACT: City Manager
PHONE NUMBER: 404-296-6489

PURPOSE: The Alcohol Review Committee (ARC) has received and reviewed an ownership change application for alcohol beverage package store for Beer/Wine/Malt/Liquor. The location to be considered for this alcohol beverage license is Lulu's Package Store located at 3900 E Ponce De Leon Ave.

NEED/ IMPACT: The new owner of the Lulus Package store at 3900 E Ponce de Leon Ave has made application for an alcohol beverage, license for Beer/Wine/Malt/Liquor beverages for retail package sales. To date: all of the required inspections have been performed and the required background check has been passed. Code Compliance Officer Shennetha Smith has reviewed the application and has measured the location and found it does meet minimum distances as defined by the Code.

The ARC has performed a thorough review of the various components to this application.

RECOMMENDATIONS: Staff (ARC) recommends approval.

Under Clarkston Code Sec. 3-53, the City Council is vested with the final authority to grant an alcohol license.



NEW ALCOHOLIC BEVERAGE LICENSE INFORMATION & CHECK LIST

- A state license must be obtained before any alcoholic beverages can be served or sold in the City of Clarkston. Contact the Georgia Department of Revenue at (404) 417-4902.
- Read and understand the City's Alcohol Beverage Ordinance, Chapter 3 of the Code of Ordinances.
- If applicant is a new establishment you must also obtain an Occupational Tax Permit, please contact City Hall at (404) 296-6489.
- The following information will be required at the time of submittal of the application:
 - Completed Application Form (signed and notarized);
 - Must obtain or have an Occupational Tax Certificate;
 - Personnel Statements from owner, partners, officers, directors, and major stockholders of private corporations, and general manager with two current passport photographs
 - Two (2) Fingerprint Cards; Must be obtained with DeKalb County, Police Headquarters, 3630 Camp Circle, Decatur, See attached form
 - All individuals required to complete personnel statements must contact the Police Department at (404) 292-9465 for background check.
 - Cash or check for the license fee plus the administrative fee;
 - Evidence of Ownership of the building or copy of the lease, if applicant is leasing the building;
 - A survey showing the distance to the nearest school/school grounds, church, library, public park, alcohol treatment facility, adult entertainment;
 - If applicant represents a franchise, copy of the franchise agreement;
 - If applicant represents an eating establishment, submit a copy of the menu;
 - If applicant represents a partnership, submit copy of the partnership agreement;
 - If applicant represents a corporation, submit articles of incorporation and certificate of incorporation;
 - Project purchases/projected gross sales (if applying for distilled spirits consumption);
- Establishments holding an Alcohol Beverage License from the City of Clarkston must submit the following reports:

On-Premise Consumption

- Excise tax-reporting for Liquor Sales (to be submitted monthly). Due the 20th of each month;
- Quarterly Reporting of food/alcohol sales; due the last day of the month after each calendar quarter.

New Alcohol Beverage License Application

Instructions: This application must be typed or printed legibly and executed under oath. Each question must be fully answered. If space provided is not sufficient to answer the question please use a separate sheet of paper. Holding an alcohol beverage license with the City of Clarkston is a privilege.

New Amendment

Date: 03/01/20

Contact Name: Senaif Fessahaye Phone: 573-818-5649

Business/Trade Name: DSMH Group LLC

D/B/A: Lulu's Package Store

Business Address: 3900 S. power de Leon Ave Clarkston, Ga 3002

Emergency Contact Name: _____ Phone: _____

TYPE OF BUSINESS

- Convenience Store
- Grocery Store
- Package Store
- Manufacturer
- Specialty Beverage Store
- Restaurant
- Wholesale
- Other: _____

TYPE OF LICENSE AND FEES

Retail Dealers On-Premise Consumption/Retail Dealers Package

- Beer/Malt Beverages \$750
 - Wine \$750
 - Beer/Wine/Malt Beverages \$1,000
 - Distilled Spirits \$2,500
 - Wholesale Wine or Beer/Malt \$350
 - Wholesale Beer/Wine/Malt \$450
 - Wholesale Distilled Spirits (City) \$5,000, No location in City \$450
 - Administrative (Investigative Application) Fee (applicable to all Licenses) \$200.00
- Employee Work Permit Initial/Renewal \$50.00 (per employee) Must apply Clarkston Municipal Courts Office (404-292-9465)

FOR OFFICE USE ONLY

Department	Date	Approve/Deny	Comments
City Clerk			
Planning & Development			
Police Department			
Quality of Life Officer			
City Manager			

APPLICANT INFORMATION

Please submit a passport photograph of owner(s) with completed application.

Full Name: Senait Fessahayo Date of Birth: 09/03/1966
 Current Address: 2655 Lake Common Ct Snellville, Ga 30078

Name of Agent or Representative (if different from Applicant): Negadi Enehaw
 Phone: (404) 449-4132
 Address: 118 plantation Ct, Clarkston, Ga 30021

Address of Applicant (if different for the past 5 years):

Have you ever been arrested? Yes No (If yes, explain) _____

BUSINESS INFORMATION

Type of business entity: Sole Proprietorship Partnership Corporation Other

Has an Occupational Tax Certificate been obtained and paid for at said business? Yes No (If not issued by the City of Clarkston please include a copy with application.)

Federal Tax ID Number: 58-2045991 State Tax ID Number: 300-219213

Do you own the property? Yes No (If no, please provide name, address, and contact number for the landlord. A copy of the Lease must be attached to this application.) _____

Name each person(s) having a financial interest in the Establishment.

Full Name	Position	Social Security Number	Address	% of Interest
<u>Senait Fessahayo</u>	<u>owner</u>	<u>[REDACTED]</u>	<u>2655 Lake Common Ct Snellville, Ga 30078</u>	<u>100%</u>

Have you or anyone with interest in the establishment ever or do you currently hold an alcohol beverage license with any other municipality, county, or state? Yes No

If so, have you or anyone holding interest in the establishment ever been placed on probation or had your license revoked? Yes No (If yes, please explain on separate sheet of paper and attach hereto.)

Provide name, address, Social Security Number, and phone number for each Manager if different from owner. A passport photograph, Personnel Statement, and Background Check must be submitted for each manager.

Full Name	Position	Social Security Number	Address	% of Interest
Fessahaye Senait	Owner		2653 Lake Commons Ct	
Fessahaye Senait	Manager	[REDACTED]	Snellville GA 30078	100%

If new application for Retail Sale, attach a surveyor's plat and state the straight line distance from property line of school, church, library, or public recreation area to the wall of the building where alcohol beverages are sold.

Survey attached, Code Officer Smith confirmed measurement accuracy.

Church: _____ School: _____

Library: _____ Public Recreation: _____

VERIFICATION OF APPLICATION

I hereby make application for an Alcohol Beverage License for the City of Clarkston. I understand that holding this license is a privilege. I do hereby affirm and swear that the information provided herein is true, complete and accurate, and I understand that any inaccuracies may be considered just cause for invalidation of this application and any action taken on this application. I understand the City of Clarkston reserves the right to enforce any and all ordinances regardless of payment of license fee and further that it is my/our responsibility to conform with said ordinances in full. I hereby acknowledge that all requirements shall be adhered to. I can read the English language and I freely and voluntarily have completed this application. I understand that it is a felony to make false statements or writings to the City of Clarkston pursuant to O.C.G.A. §16-10-20.

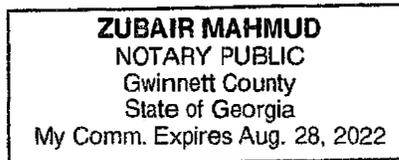
[Signature]
Signature of Applicant or Agent

Senait Fessahaye
Print or Type Name

I certify that SENAIT FESSAHAYE (name of applicant) personally appeared before me, and that he signed his name to the foregoing statements and answers made therein, and under oath, has sworn that said statements and answers are true.

This 2nd day of MARCH, 2020

[Signature]
Notary Public



My commission expires on: August 28, 2022

BACKGROUND CHECK OWNERS/MANAGERS

An Alcohol Permit Applications must include a background check for all owners, partners and managers.

Application must be made to the City of Clarkston Police Department, Municipal Courts, 3921 Church Street, Clarkston, GA 30021, (404) 292-9465

Hours: 9:00a.m. to 4:00p.m. Monday through Friday

Fees:

Owner/Manger Permits are \$50.00 which includes processing of Criminal History record

Payment Forms: Cash or Credit Card

Name: Servit Fessayane Date: 3-3-20

Business: DSMHJ Group LLC Title: President

Are you an Owner or Manager? Manager Owner Partner

If you are an Owner/ Manager have you obtained Personnel Statement from City Hall? Yes No

Do you consent to the Clarkston Police Department checking your criminal history? Yes No

Have you ever been convicted or has plead guilty or entered a plea of nolo contendere to any crime, misdemeanor, and/or felony involving moral turpitude, lottery, or illegal possession or sale of narcotics or liquors within a period of ten (10) years immediately prior to the filing of such application. Yes, Please Explain No

Are you currently serving probation? Yes, Please Explain No

For Official Use Only

City Hall:

Authorized By: _____ Date: _____ ID Paid: Yes No

Police Department:

Criminal History Record Checked? Yes No

Applicant is able to obtain Permit? Yes No, If no, please state reason for denial.

Background check/fingerprinting conducted by DeKalb PD for GBI verification

Permit No. _____

Signed By: Code S. Smith Date: 9-16-2020

Name: Shennetha Smith
Please Print Name

**ALCOHOLIC BEVERAGE PERSONNEL STATEMENT
OWNERS/MANAGERS/ASSISTANT MANAGERS**

For Official Use Only	Business: <u>Lulu's Package</u>
Type of License: <u>Package Store</u>	Address: <u>3900 E Ponce de Leon Ave</u>
	Telephone: _____

Instructions: This personnel statement must be executed under oath or affirmation by every person having any ownership or profit sharing interest in, or managing any place of business applying for license from the City of Clarkston, Georgia to sell or deal in alcoholic beverages or distilled spirits. Please type or print clearly in ink. If not legible, Statement will not be accepted. Each question must be fully answered. If the space provided is not sufficient, answer the question on a separate sheet and indicate in the space provided that such separate sheet is attached. A personnel statement, including two (2) passport-size photographs and two (2) fingerprint cards are required by Questions 31 and 32, for all owners/managers/assistant managers and must be submitted with every license application.

1. Senait Fessahayo
Full Name of Applicant and Address

2. Social Security Number: [REDACTED]

3. Driver's License Number: [REDACTED]

4. Date of Birth: [REDACTED] Place of Birth: Mendefera, Eritrea

5. U.S. Citizen A copy of verifiable identification must be provided at the time of application. Copy of driver's license or State photo ID card.
a. by birth
b. Naturalized

Date: 11-21-2013 Place: Kansas City, MO Court: US District Court MO
Petition Number: _____ Certificate Number: 36238013
Derived Parent Certificate Number(s) N/A
Alien Registration Number: [REDACTED]
Native Country: Eritrea Date of Port Entry: 2007

6. How long have you been a legal resident of Georgia? 1 Years 3 Months

7. Marital Status Single Married Widowed Divorced Separated

8. If married, give spouse's full name Woldegiorgis Russom

9. Physical Description of Applicant African Amer Race Sex 5'02 Height 125 Weight
Age Black Hair Color Brown Eyes

10. Education and training specific to restaurant/alcohol field. _____

11. Have you ever used or been known by any other name Yes No

12. List maiden name, names by former marriages, former names changed legally or otherwise, aliases or nicknames. For each, list the period which you were known by this name. N/A

13. Are you registered to vote in the state of Georgia yes No
County Registered _____ Number of years registered _____

14. For the last calendar year, did you file and pay any County property tax Yes () No

15. For the last calendar year, did you file and pay any City property tax Yes () No

Name of City Smyrna, Ga

16. Employment record for the past ten (10) years (Give most recent experience first, is self-employed give details)

	From	To	Employer	Occupational Duties	Reason for Leaving
a.			<u>East side garden</u>	<u>Assistant</u>	<u>Being</u>
b.			<u>PIMEX Home Health care</u>	<u>CNA</u>	<u>Still working</u>
c.					
d.					
e.					
f.					
g.					
h.					

17. List, with your most recent place of residence first, all of your residences for the past ten (10) years

	Date From/To	Street	City	State	
a.	<u>SMYRNA</u>	<u>2655 Lake Commons Ct</u>	<u>SMYRNA</u>	<u>GA</u>	<u>30078 14 years 3 months</u>
b.	<u>4406 Mock a dog</u>	<u>Columbia, mo</u>	<u>65202</u>		<u>7 years</u>
c.	<u>1630 Brent Ford Drive</u>	<u>Tucker</u>	<u>GA</u>	<u>30084</u>	
d.					
e.					

18. Military Service () Yes No List Serial Number _____ Branch of Service _____
Period of Service _____ Date of Discharge _____ Type of Discharge _____

19. Have you ever been convicted of a felony relating to violence, illegal substances, gambling, theft or alcohol use, or of a crime opposed to decency and morality, or who has been convicted of a crime involving violation of the ordinances of the city or any other city or county relating to the use, sale, taxability, or possession of malt beverages, wine or liquor, or violations of the laws of the state and federal government pertaining to the manufacture, possession, transportation or sale of malt beverages, wine or intoxicating liquors, or the taxability thereof within ten (10) years preceding this application? _____ Yes No

20. Full name of dealer and trade name, if any, submitting application of which this personnel statement is a part. _____

21. Position of applicant in dealer's business. _____

22. Does applicant have any ownership/profit sharing interest in the business? () Yes () No

State annual salary of applicant or the estimated annual profit or compensation derived from this business. _____

23. Do you have any financial interest in any bar, lounge, tavern, restaurant, or other place of business where alcoholic beverages are sold and consumed on the business premises? () Yes No if yes, explain

24. Do you have any financial or are you employed in any wholesale or retail liquor business other than the business submitting the license application of which this personnel statement is a part? () Yes No if yes, give names and locations and amount of interest in each.

25. Do you have any financial interest or are you employed in any business engaged in distilling, bottling, rectifying or selling (wholesale, retail or manufacturing) alcoholic beverages in this state or outside this state which has not otherwise been disclosed in the statement. () Yes No If yes, explain

26. Have you ever had any financial interest in an alcoholic beverage business which was denied a permit? () Yes No if yes, explain

27. Has any alcoholic beverage business in which you hold or have held any financial interest or have been employed, ever been cited for any violation for the rules and regulations of the State Revenue Commission relating to the sale or distribution of distilled spirits? () Yes No If yes, explain

28. Have you ever been denied a bond by a commercial surety company? () Yes No if yes, explain

29. Are you related by blood, marriage or adoption to any persons engaged in any business handling alcoholic beverages, whiskeys or liquors in the State of Georgia. () Yes No

30. Personal References. Give three (3) personal references, not relatives (i.e., former employees, fellow employees or school teachers who are responsible adults, business or professional men or women) who have known you well during the past five (5) years.

Name ~~F. F. F. A~~ Jacqueline Porter
Residence 513 Old Highway 63 North Alt 13 65201
Business Address _____
Telephone Number _____ Number of years known _____

Name Keste Mabte
Residence _____
Business Address 3838 Buckingham Park Jefferson City
Telephone Number 573-353-1096 Number of years known 12 years

Name ~~F. F. F. A~~ home health care 7 years
Residence 1101 To Drive SW Columbia, MO 65203
Business Address _____
Telephone Number (573) 443 9911 Number of years known 7 years

31. Attach two (2) passport-size photographs (front view). Write name on back of photographs and also the name of dealer submitting a license application. Initial here if such photographs are attached. SE

32. There must be submitted with this personal statement the fingerprints of applicant on two (2) fingerprint cards, which will be furnished to the City of Clarkston. Initial here that such fingerprint cards are attached. Completed by DeKalb Police /Fingerprints

Verification

I, Senait FESSAHAYE, applicant, do solemnly swear, subject to criminal penalties for false swearing, that the statements and answers made by me to the foregoing questions in this application for a City of Clarkston license as a dealer in alcoholic beverage and distilled spirits are true, and no false or fraudulent statements or answer is made therein to procure the granting of such license. I hereby submit for an Alcoholic Beverage Privilege License Personnel Statement for the City of Clarkston. I do hereby swear or affirm that the information provided herein is true, complete and accurate, and I understand that any inaccuracies may be considered just case for invalidation of this statement and any related application. I certify that neither I, nor any of the other owners of the retail or wholesale establishment, nor the manager of such establishment has been convicted or has plead guilty or entered a plea of nolo contendere to any crime, misdemeanor, and/or felony involving moral turpitude, lottery, or illegal possession or sale of narcotics or liquors within a period of ten (10) years immediately prior to the filing of such application. I understand the City of Clarkston reserves the right to enforce any and all ordinances regardless of payment of license fees and further that it is my/our responsibility to conform to said ordinance in full. I hereby acknowledge that all requirements shall be adhered to. I can read the English language and I freely and voluntarily have completed this application. I understand that it is a felony to make false statements or writings to the City of Clarkston pursuant to O.C.G.A. §16-10-20.

Senait FESSAHAYE
Applicant's Signature (full name in ink)

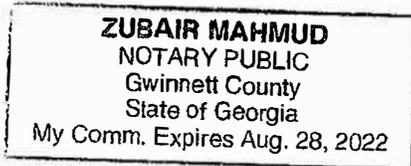
Senait
Applicant's Name (Print or Type)

I certify that SENAIT FESSAHAYE (name of applicant) personally appeared before me, and that he signed his name to the foregoing statements and answers made therein, and under oath, has sworn that said statements and answers are true.

This 2nd day of MARCH, 20 20

[Signature]
Notary Public

Seal:





FINGERPRINTS NON-CRIMINAL JUSTICE APPLICANT'S PRIVACY RIGHTS

As an applicant that is the subject of a Georgia only or a Georgia and Federal Bureau of Investigation (FBI) national fingerprint/biometric-based criminal history record check for a non-criminal justice purpose (such as an application for a job or license, immigration or naturalization, security clearance, or adoption), you have certain rights which are discussed below.

- You must be provided written notification that your fingerprints/biometrics will be used to check the criminal history records maintained by the Georgia Crime Information Center (GCIC) and the FBI, when a federal record check is so authorized.
- If your fingerprints/biometrics are used to conduct a FBI national criminal history check, you are provided a copy of the Privacy Act Statement that would normally appear on the FBI fingerprint card.
- If you have a criminal history record, the agency making a determination of your suitability for the job, license, or other benefit must provide you the opportunity to complete or challenge the accuracy of the information in the record.
- The agency must advise you of the procedures for changing, correcting, or updating your criminal history record as set forth in Title 28, Code of Federal Regulations (CFR), Section 16.34.
- If you have a Georgia or FBI criminal history record, you should be afforded a reasonable amount of time to correct or complete the record (or decline to do so) before the agency denies you the job, license or other benefit based on information in the criminal history record.
- In the event an adverse employment or licensing decision is made, you must be informed of all information pertinent to that decision to include the contents of the record and the effect the record had upon the decision. Failure to provide all such information to the person subject to the adverse decision shall be a misdemeanor [O.C.G.A. § 35-3-34(b) and §35-3-35(b)].

You have the right to expect the agency receiving the results of the criminal history record check will use it only for authorized purposes and will not retain or disseminate it in violation of state and/or federal statute, regulation or executive order, or rule, procedure or standard established by the National Crime Prevention and Privacy Compact Council.

If the employment/licensing agency policy permits, the agency may provide you with a copy of your Georgia or FBI criminal history record for review and possible challenge. If agency policy does not permit it to provide you a copy of the record, information regarding how to obtain a copy of your Georgia, FBI or other state criminal history may be obtained at the GBI website (<http://gbi.georgia.gov/obtaining-criminal-history-record-information>).

If you decide to challenge the accuracy or completeness of your Georgia or FBI criminal history record, you should send your challenge to the agency that contributed the questioned information. Alternatively, you may send your challenge directly to GCIC provided the disputed arrest occurred in Georgia. Instructions to dispute the accuracy of your criminal history can be obtained at the GBI website (<http://gbi.georgia.gov/obtaining-criminal-history-record-information>).

PRIVACY ACT STATEMENT

Authority: The FBI's acquisition, preservation, and exchange of fingerprints and associated information is generally authorized under 28 U.S.C. 534. Depending on the nature of your application, supplemental authorities include Federal statutes, State statutes pursuant to Pub. L. 92-544, Presidential Executive Orders, and federal regulations. Providing your fingerprints and associated information is voluntary; however, failure to do so may affect completion or approval of your application.

Principal Purpose: Certain determinations, such as employment, licensing, and security clearances, may be predicated on fingerprint-based background checks. Your fingerprints and associated information/biometrics may be provided to the employing, investigating, or otherwise responsible agency, and/or the FBI for the purpose of comparing your fingerprints to other fingerprints in the FBI's Next Generation Identification (NGI) system or its successor systems (including civil, criminal, and latent fingerprint repositories) or other available records of the employing, investigating, or otherwise responsible agency. The FBI may retain your fingerprints and associated information/biometrics in NGI after the completion of this application and, while retained, your fingerprints may continue to be compared against other fingerprints submitted to or retained by NGI.

Routine Uses: During the processing of this application and for as long thereafter as your fingerprints and associated information/biometrics are retained in NGI, your information may be disclosed pursuant to your consent, and may be disclosed without your consent as permitted by the Privacy Act of 1974 and all applicable Routine Uses as may be published at any time in the Federal Register, including the Routine Uses for the NGI system and the FBI's Blanket Routine Uses. Routine uses include, but are not limited to, disclosures to: employing, governmental or authorized non-governmental agencies responsible for employment, contracting, licensing, security clearances, and other suitability determinations; local, state, tribal, or federal law enforcement agencies; criminal justice agencies; and agencies responsible for national security or public safety.



APPLICANT SIGNATURE

3/2/2020

DATE



NOTARY SIGNATURE

3/2/2020

DATE

SEAL

ZUBAIR MAHMUD
NOTARY PUBLIC
Gwinnett County
State of Georgia
My Comm. Expires Aug. 28, 2022

Results confirmed by Code Officer S. Smith, Clarkston

March 17, 2020

To Whom It May Concern:

This is to confirm that I am 100% owner of DSMHJ Group, LLC. I have attached my certificate of corporation.

Sincerely,

A handwritten signature in black ink, appearing to be 'Senait Fessahaye', written over a horizontal line.

Senait Fessahaye

STATE OF GEORGIA

Secretary of State

Corporations Division

313 West Tower

2 Martin Luther King, Jr. Dr.

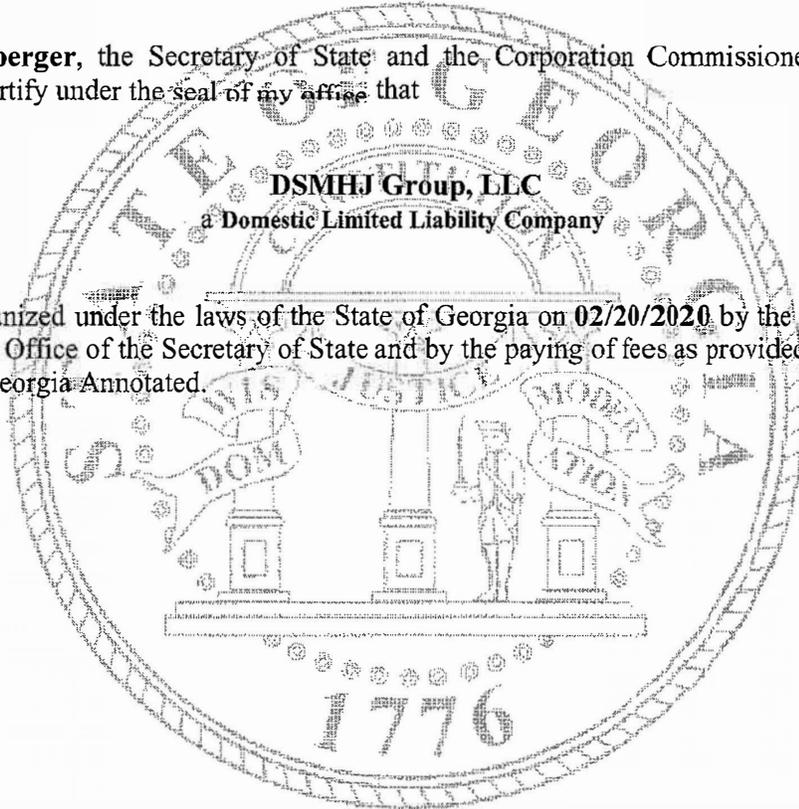
Atlanta, Georgia 30334-1530

CERTIFICATE OF ORGANIZATION

I, **Brad Raffensperger**, the Secretary of State and the Corporation Commissioner of the State of Georgia, hereby certify under the seal of my office that

DSMHJ Group, LLC
a Domestic Limited Liability Company

has been duly organized under the laws of the State of Georgia on **02/20/2020** by the filing of articles of organization in the Office of the Secretary of State and by the paying of fees as provided by Title 14 of the Official Code of Georgia Annotated.



WITNESS my hand and official seal in the City of Atlanta and the State of Georgia on **02/24/2020**.



Brad Raffensperger

Brad Raffensperger
Secretary of State

ARTICLES OF ORGANIZATION

Electronically Filed
Secretary of State
Filing Date: 2/20/2020 1:13:56 PM

BUSINESS INFORMATION

CONTROL NUMBER 20026455
BUSINESS NAME DSMHJ Group, LLC
BUSINESS TYPE Domestic Limited Liability Company
EFFECTIVE DATE 02/20/2020

PRINCIPAL OFFICE ADDRESS

ADDRESS 3900 E Ponce De Leon Ave., Clarkston, GA, 30021-1812, USA

REGISTERED AGENT

NAME	ADDRESS	COUNTY
Senait Fessahaye	3900 E Ponce De Leon Ave., Clarkston, GA, 30021-1812, USA	Dekalb

ORGANIZER(S)

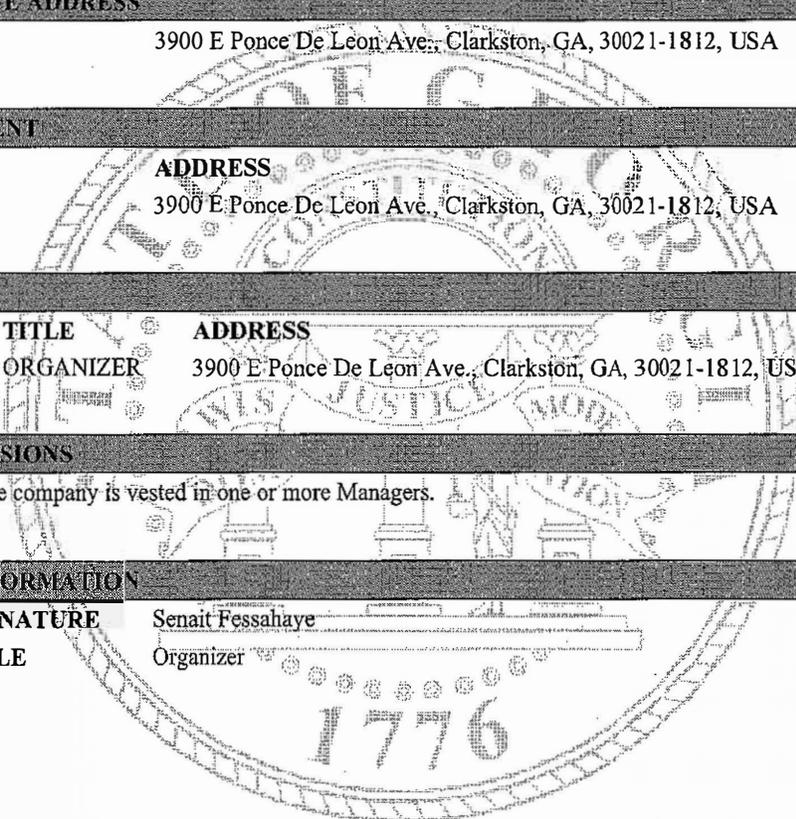
NAME	TITLE	ADDRESS
Senait Fessahaye	ORGANIZER	3900 E Ponce De Leon Ave., Clarkston, GA, 30021-1812, USA

OPTIONAL PROVISIONS

The management of the company is vested in one or more Managers.

AUTHORIZER INFORMATION

AUTHORIZER SIGNATURE Senait Fessahaye
AUTHORIZER TITLE Organizer



ALCOHOLIC BEVERAGE LICENSE SURVEY

To: DeKalb County Alcohol License Date: 3-13-2020

Applicant's Name: DSMHL GROUP LLC

Trade Name: LULU'S PACKAGE STORE

Business Address: 3900 E. PONCE DE LEON AVENUE, CLARKSTON, GA 30021

The undersigned surveyor has examined the subject location and has made measurements to determine compliance or non-compliance with the following distance requirements:

BEER AND / WINE (100 YARDS MINIMUM)

1. 1,400 yards to the nearest school building, school ground, educational facility or college campus; this includes kindergartens, or churches which have schools or kindergartens located at following address:

ATLANTA SCHOOL FOR DEAF: 880 N. INDIAN CREEK DR CLARKSTON, GA 30021

2. 4,224 yards to the nearest alcohol treatment center or adult entertainment establishment at following address.

ADVANCED COUNSELING: 1370 MONTREAL RD TUCKER, GA 30084

LIQUOR (200 YARDS MINIMUM)

1. 1,000 yards to the nearest church or other place used primarily for religious services at the following address.

CLARKSTON INTERNATIONAL: 3896 CHURCH ST CLARKSTON, GA 30021

2. 4,224 yards to the nearest alcohol treatment center or adult entertainment establishment at following address.

ADVANCED COUNSELING: 1370 MONTREAL RD TUCKER, GA 30084

3. 143 yards to private residence (includes houses, apartments, condos & etc). Give name if other than a house.

801 MELL AVENUE, CLARKSTON, GA 30021

4. 1,400 yards to nearest school building, school ground and college campus; this includes kindergartens or churches which have schools or kindergartens. Give name and address on next line.

ATLANTA SCHOOL FOR DEAF: 880 N. INDIAN CREEK DR CLARKSTON, GA 30021

LIQUOR STORES (1,000 yards minimum)

1. 60 yards to the nearest operating liquor store. Give complete name and address on next line:

TEXACO GAS STATION: 3908 E. PONCE DE LEON AVE CLARKSTON, GA 30021

ALL MEASUREMENTS ARE TO BE AS FOLLOWS:

- (a) From the front door of the structure from which alcoholic beverage is to be sold or served;
(b) In a straight line to the nearest public sidewalk, street, highway, road or walkway;
(c) Along such public sidewalk, street, highway, road or walkway;
(d) To the front door of the building, unless you are measuring to an educational facility (schools and school grounds). When measuring to a school, the measurement stops at the nearest property line of the school.

Note: Survey drawing showing distance to the businesses described above must be attached to this survey certificate.

Signature of Land Surveyor: Daniel F. Conway, State License Number: 2360, Date: 3-13-2020

Revised 04-2000



MAGNETIC NORTH
SCALE: 1"=200'

ALCOHOL SURVEY
PREPARED FOR: DSMHL GROUP, LLC
D.B.A. LULU'S PACKAGE STORE
LAND LOT 97, 18TH DISTRICT,
DEKALB COUNTY, GEORGIA - 03-13-20

NEAREST CHURCH: #3,000' / 1,000YOB
CLARKSTON INTERNATIONAL
3699 CHURCH ST
CLARKSTON, GA 30021

NEAREST SCHOOL: #4,220' / 1,400YOB
ATL. SCHOOL FOR DEAF
800 N. INDIAN CREEK DR
CLARKSTON, GA 30021

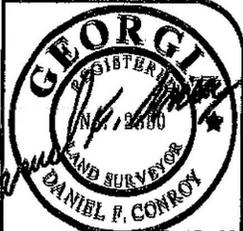
NEAREST ADULT ENTERTAINMENT:
#4,260' / 1,420YOB
LOVE BRACK
632 MONTREAL RD
CLARKSTON, GA 30021

NEAREST BEER SALES: #149' / 50YOB
TEXACO GAS STATION
3906 E. PONCE DE LEON AVE
CLARKSTON, GA 30021

NEAREST ALCOHOL TREATMENT CENTER:
#12,670' / 4,220 YOB
ADVANCED COUNSELING
1370 MONTREAL RD
TUCKER, GA 30084

NEAREST PRIVATE RESIDENCE:
#420' / 143YOB
801 WELT AVE
CLARKSTON, GA 30021

MEASUREMENTS DETERMINED FROM FRONT DOOR OF PROPOSED LICENSE PREMISES TO THE FRONT DOOR OF THE AFORESAID BIFES MEASURED BY THE MOST DIRECT ROUTE OF TRAVEL ON THE GROUND.
SCHOOL & PRIVATE RESIDENCE: MEASUREMENT DETERMINED FROM FRONT DOOR OF PROPOSED LICENSE PREMISES TO THE PROPERTY LINE OF THE AFORESAID SITE (DEKALB COUNTY SECT: 4-101-1/4.3.32-0)



3-13-20
FOR THE FIRM
BOUNDARY ZONE, INC.
LSF #839
NOT VALID WITHOUT ORIGINAL SIGNATURE

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REPRODUCTIONS ARE
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WRITTEN PERMISSION
OF THIS SURVEYOR.

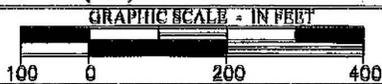
BOUNDARY
zone, inc. LAND SURVEYING SERVICES
WWW.BOUNDARYZONE.COM
(770) 271-5772 / (919) 363-9226

SUWANEE
444 SATELLITE BLVD, SUITE 200
SUWANEE, GEORGIA 30098

ATLANTA
1100 PEACHTREE ATREE, SUITE 200
ATLANTA, GA 30309

KENNESAW
975 CEDAR PLAGE BLVD, SUITE 100
KENNESAW, GA 30144

RALEIGH
8024 GLENWOOD AVE, SUITE 109
RALEIGH, NC 27612



PROJECT
2180301
SHEET
1 OF 1

CITY OF CLARKSTON

CLARKSTON CITY COUNCIL MEETING

BUSINESS AGENDA / MINUTES

MEETING DATE: September 29, 2020

ITEM NO: E8

ACTION TYPE:
RESOLUTION

HEARING TYPE:
Work Session

SUBJECT: Adopt a Resolution authorizing the City's Adoption of the DeKalb County Pre-Disaster Hazard Mitigation Plan

DEPARTMENT: City Administration

PUBLIC HEARING: YES NO

ATTACHMENT: YES NO
Pages: 1

INFORMATION CONTACT: ROBIN I GOMEZ,
PHONE NUMBER: 404-296-6489

PURPOSE: City Council to adopt a resolution authorizing the adoption of the 2016 DeKalb County Pre-Disaster Hazard Mitigation Plan.

BACKGROUND/IMPACT:

The City has been requested by the Dekalb County Emergency Management Agency (DEMA) to adopt a Resolution authorizing the City's adoption of the referenced 2016 County plan enclosed in the following link:

https://www.dekalbcountyga.gov/sites/default/files/DeKalbCountyGA_CountywideHazardMitigationPlan_2016withAppendices.pdf

The County notified us that in preparation for the next update in 2022, the City of Clarkston had not submitted an Adoption Resolution for the plan. The resolution is necessary for the City to continue to remain eligible for disaster funds. The plan essentially serves as the comprehensive emergency guide to all types of natural disasters resulting from floods, hurricanes, tornadoes, ice, snow, earthquakes, droughts, etc. It is vitally important that the county and all cities have an adequate plan to best prepare and respond to all natural hazards and potential emergencies. The City was an active participant with the County and other cities in the 2016 plan adoption and will similarly participate for the 2022 update.

RECOMMENDATION:

Council to adopt a resolution authorizing the adoption of the 2016 DeKalb County Pre-Disaster Hazard Mitigation Plan



DEKALB COUNTY, GA – 2016 COUNTYWIDE HAZARD MITIGATION UPDATE

Unincorporated DeKalb, Avondale Estates, Brookhaven, Chamblee, Clarkston, Decatur, Doraville, Dunwoody, Lithonia, Pine Lake, Stone Mountain



Plan Highlights



DeKalb County Interim CEO Lee May
& The Board of Commissioners

cordially invite you to the

**FOURTH BIENNIAL DEKALB COUNTY
EMERGENCY
PREPAREDNESS
FESTIVAL**

Save the Date

Saturday, September 19, 2015
10 A.M. - 3 P.M.
North DeKalb Mall
2050 Lawrenceville Highway
Decatur, GA 30033

Are you prepared for floods, tornadoes or other natural disasters? Please join us to receive disaster & emergency preparedness information and learn about fire safety and crime prevention.

Presented by the DeKalb County Emergency Management Agency.



DeKalb County Government • Manuel J. Maloof Building • 1300 Commerce Drive, Decatur, GA 30030 • (404) 371-2000
www.DeKalbCountyGA.gov • @ItshDeKalb

- Representatives of DeKalb County and its municipalities reviewed vulnerability for 11 natural hazards
- A couple of the hazards (tornado and winter storm) were elevated to the highest category for planning consideration due to their impacts on the county over the past 5 to 10 years
- Brookhaven, incorporated in 2012, became one of the largest municipalities, and has been added to the mitigation planning process
- Each community participated in Advisory Committee Meetings, provided input to the planning process, and updated mitigation actions to reduce their vulnerability to natural hazard

RESOLUTION NO. _____

A RESOLUTION BY THE CITY OF CLARKSTON ADOPTING THE 2016 DEKALB COUNTY PRE-DISASTER HAZARD MITIGATION PLAN.

WHEREAS, DeKalb County and its municipal governments are required to complete a Pre-Disaster Hazard Mitigation Plan by the Disaster Mitigation Act of 2000; and

WHEREAS, under the provisions of the Disaster Mitigation Act of 2000, local governments that complete Pre-Disaster Hazard Mitigation Plans will remain eligible for Federal mitigation funding; and

WHEREAS, DeKalb County and its municipal governments have completed a Pre-Disaster Hazard Mitigation Plan that fulfills the Federal requirements of the Disaster Mitigation Act of 2000.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Clarkston, Georgia that the City of Clarkston hereby adopts this Pre-Disaster Hazard Mitigation Plan.

SO RESOLVED, this _____ day of _____, 2020.

CITY COUNCIL, CITY OF CLARKSTON, GEORGIA

Awet Eyasu, Vice Mayor

Attest:

Tracy Ashby, City Clerk

CITY OF CLARKSTON

CLARKSTON CITY COUNCIL MEETING

BUSINESS AGENDA / MINUTES

MEETING DATE: September 29, 2020

ITEM NO: E9

ACTION TYPE:
BUSINESS APPEAL

HEARING TYPE:
Work Session

SUBJECT: Appeal of City Denial of Sign Permit Application from Railroad Outdoor LLC, to Erect a 14' x 48' FF 20' VEE @ 50' OAH Billboard Sign on the Property Located at 3611 Church Street.

DEPARTMENT: City Administration

PUBLIC HEARING: YES NO

ATTACHMENT: YES NO
Pages: 17

INFORMATION CONTACT: ROBIN I. GOMEZ,
PHONE NUMBER: 404-296-6489

PURPOSE: City Council to discuss/review appeal by Railroad Outdoor LLC of City of Clarkston City Manager's denial of a sign permit application from Railroad Outdoor LLC to erect a 14' x 48' FF 20' VEE @ 50' OAH billboard sign on the property located at 3611 Church St.

BACKGROUND/IMPACT:

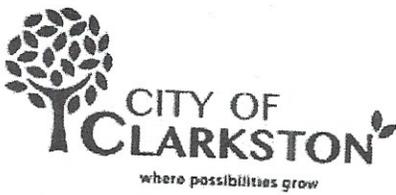
City received referenced sign permit application (copy enclosed) on September 10, 2020, and subsequently submitted a denial on September 14, 2020 (copy enclosed), based on the City's prohibition of pole signs. Applicant submitted a reply letter on September 16, 2020 (copy enclosed), appealing the City's decision, suggesting that the City look for the most specific applicable regulations for the denial. Our review found several specific City code references requiring denial of the application, specifically:

1. Billboard signs are prohibited within 500 feet of residential parcels (City Code, Sec 15.5-63f).
2. Billboard signs are prohibited within 1,000 feet of other billboards (City Code, Sec 15.5-63e).

City subsequently provided the applicant the specific denial reasons in a letter dated September 22, 2020 (copy enclosed) as well as advising the applicant of the appeal date/time, October 6, 2022, beginning at 7 pm.

RECOMMENDATION:

Council to deny applicant's sign permit application appeal.



SIGN PERMIT APPLICATION

Form # 200-SP

This document must be completed in full by the Applicant. Please see Applicant Instructions for complete submittal requirements.

Date of Application 9/04/20

Applicant Name Kelly Shaw

Business Name Railroad Outdoor LLC

Business Address P.O. Box 250633 Atlanta, GA 30325

Business Phone Number 800-977-6889

Alternate Phone Number 678-754-8630

Email Address kshaw@railroadoutdoor.com

Is this a commercial or residential use? Commercial Residential

Zoning District NC-1

Contractor Erecting Sign (required) Railroad Outdoor LLC

Contractor Address P.O. Box 250633 Atlanta GA 30325

Contractor Business Phone 678-754-8630

Contractor Email Address kshaw@railroadoutdoor.com

Address where Sign will be Erected 3611 Church Street Clarkston, GA

Description of Sign Position in Relation to Nearest Building See site plans

FOR OFFICE USE ONLY

Permanent sign application fee is 10% of value of the sign to a maximum of \$500.00

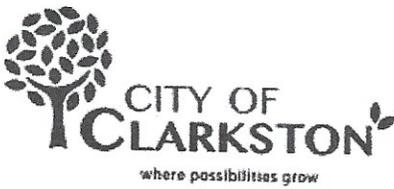
Payment Type: Check # _____ Cash _____ Money Order _____

Amount Paid: \$ _____ Payment Received by _____

Comments: _____

Submittal Instructions (see Applicant Instructions for full requirements):

1. Please make sure sign design conforms to City of Clarkston Code of Ordinances Section 15.5-1 et seq., available online at www.cityofclarkston.com before constructing sign.
2. Do not construct sign prior to issuance of permit.
3. Completed application and plans must be in the City Clerk's office no later than 5:00pm on the first day of the month in order to be on that month's Zoning and Review Committee agenda.
4. If application is incomplete, it will not be considered for approval.
5. Filing fee must be submitted with the application.
6. Applicant may appeal any decision to the City Council.
7. Please include **six (6) copies** of the following items with the application:
 - a. Plans and specifications which **must include**:
 - Site plan of the building and all proposed and existing sign locations, including _____ Included _____



SIGN PERMIT APPLICATION

Form # 200-SP

CONDITIONS

By submitting this Application, Applicant agrees to the following conditions which are mandatory for a sign permit in the City:

Insurance Requirement

Applicant must procure, maintain and keep in full force and effect at all times for so long as the sign that is the subject of this application is in place, liability insurance insuring against all third party liability claims and demands for injury to, or death of, persons, or damage to property which arise out of the installation, placement or maintenance of said sign. Such policy of insurance shall insure against any such claim, injury, or loss in an amount not less than \$500,000.00, per occurrence, \$1,000,000.00 General Aggregate for injury (including death) to one or more persons attributable to a single occurrence and for property damage. Such liability insurance may be in the form of general premises liability insurance. A certificate reflecting such insurance coverage shall be provided to the City before the issuance of any sign permit.

Maintenance of Sign

Applicant agrees to maintain said sign in a safe manner, so that it is not a hazard to pedestrian or vehicular traffic, and to conform to all zoning, traffic and safety ordinances of the City of Clarkston with regard to the placing of said sign.

Removal of Sign

The undersigned agrees to remove any sign upon request by the City of Clarkston, in the event it should be deemed by the City Manager to be hazardous to the health, safety and welfare of the public.

SO AGREED:

_____ *[Handwritten Signature]* _____ *9/04/20*
 Applicant Signature Date

Approval Planning & Zoning Committee:

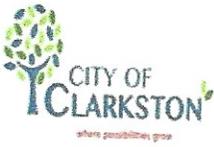
 Print Name Title

 Signature Date

Approval by City Council (When Applicable):

 Print Name Title

 Signature Date



City of Clarkston 1055 Rowland Street Clarkston, GA 30021	PERMIT APPLICATION Job Address: _____ _____
---	--

PROPERTY OWNER <i>Rezwana and Rafiq Ahmad</i>	PHONE
MAILING ADDRESS <i>3611 Church St Clarkston GA 30021</i>	
GENERAL CONTRACTOR/CONTACT PERSON <i>Kelly Shaw</i>	PHONE <i>678-754-8630</i>
CONTRACTOR ADDRESS: City, State, and Zip <i>P.O. Box 250633 Atlanta GA 30325</i>	LICENSE NUMBER
PLUMBING CONTRACTOR	LICENSE NUMBER
ELECTRICAL CONTRACTOR <i>John C Blue</i>	LICENSE NUMBER <i>EN 211 757</i>
MECHANICAL CONTRACTOR	LICENSE NUMBER

DESCRIPTION OF WORK: *Sign erection by caisson footing (see sign plans)*

IMPORTANT- COMPLETE ALL ITEMS AND MARK ALL APPLICABLE BOXES

B. PROPOSED PERMIT TYPE <u>RESIDENTIAL</u> <input type="checkbox"/> New Single Family Dwelling <input type="checkbox"/> New Accessory Structure <input type="checkbox"/> Alteration <input type="checkbox"/> Addition <input type="checkbox"/> Accessory Structure-Alteration <input type="checkbox"/> Pool/Hot Tub <input type="checkbox"/> Deck <u>COMMERCIAL</u> <input type="checkbox"/> New Commercial <input type="checkbox"/> Shell Only <input type="checkbox"/> New Multi-Family <input type="checkbox"/> Accessory Structure-New <input type="checkbox"/> Alteration <input type="checkbox"/> Addition <input type="checkbox"/> Accessory Structure-Alteration <input type="checkbox"/> Pool/Hot Tub <u>MISCELLANEOUS</u> <input type="checkbox"/> Electrical Work Only <input type="checkbox"/> Plumbing Work Only <input type="checkbox"/> Mechanical Work Only <input type="checkbox"/> Occupancy <input type="checkbox"/> Retaining Wall <input type="checkbox"/> Demolition <input checked="" type="checkbox"/> Sign-Stand Alone <input type="checkbox"/> Sign-Wall <input type="checkbox"/> Cell Tower- Electrical	A. SQUARE FOOTAGE Main Floor _____ Add. Floors _____ Basement _____ Covered Porch _____ Decks _____ Garage _____ Other _____ D. TOTAL VALUE Building Valuation \$ _____ E. CONSTRUCTION TYPE <input type="checkbox"/> Wood Frame <input type="checkbox"/> Structural Steel <input type="checkbox"/> Masonry <input type="checkbox"/> Other _____	J. MISCELLANEOUS Number of stories _____ Lot Size _____ Number of Parking Spaces _____ Setbacks: Required: E: _____ W: _____ N: _____ S: _____ Shown: E: <i>100'</i> W: <i>10'</i> N: <i>40'</i> S: <i>100'</i> G. TYPE OF SEWERAGE DISPOSAL <input type="checkbox"/> Public <input type="checkbox"/> Individual (Septic tank) H. TYPE OF WATER SUPPLY <input type="checkbox"/> Private <input type="checkbox"/> Public I. HEATING FUEL TYPE <input type="checkbox"/> Gas LP or NG <input type="checkbox"/> Electricity <input type="checkbox"/> Solar <input type="checkbox"/> Other _____
--	---	--

F. FEES (check box when paid) Permit Fee _____ Plan Review _____ Trade Fee _____ C/O, C/C Fee _____
 Site Fee _____ Other _____ Total Fees _____

The applicant, his agents and employees shall comply with all the rules, restrictions and requirements of the City and Building Codes governing location, construction and erection of the above proposed work for which the permit is granted. The City or its agents are authorized to order the immediate cessation of construction at anytime a violation of the codes or regulations appears to have occurred. Violation of any of the codes or regulations applicable may result in the revocation of this permit. Building MUST conform with plans, as submitted to the City. Any changes of plans or layout must be approved prior to the changes being made. Any change in the use or occupancy of the building or structure must be approved prior to proceeding with construction. The applicant is required to call for inspections at various stages of the construction, and in accordance with the aforesaid rule, the applicant shall give the building inspector not less than one day's notice to perform such activities. In the event construction is not commenced within 180 days of issuance of this permit, then the same is automatically void. Cessation of work for a period of 180 continuous days shall also cause this permit to be void. Permits are not transferable. I hereby certify that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as an authorized agent, and agree to conform to all applicable laws of the State of Georgia. All information submitted on this application is accurate to the best of my knowledge.

SIGNATURE OF APPLICANT <i>Kelly Shaw</i>	APPLICATION DATE <i>9/04/20</i>
APPROVED P&D MANAGER	DATE

COMMERCIAL – NEW CONSTRUCTION

- Building Permit Application – Completed
- 3 Sets of Structural Drawings – (Sealed when Required)
- Digital Copies of Drawings
- DeKalb County Sewer and Water permits
- DeKalb County Watershed Management Pre- Treatment Permit (If installing grease Trap)
- Drawings must show all MEP'S
- State of Georgia Contractors License
- Current Business License
- Certificate of Occupancy- Fee only required with new Certificate of Occupancy
 - o If new - compete the building permit application

COMMERCIAL – ALTERATIONS

- Building Permit Application – Completed
- 3 Sets of Structural Drawings – (Sealed when Required)
- Digital Copies of Drawings
- DeKalb County Sewer and Water permits
- DeKalb County Watershed Management Pre- Treatment Permit (If installing grease Trap)
- Drawings must show all MEP'S
- State of Georgia Contractors License
- Current Business License

MISCELLANEOUS

- Trade Permit Application
 - o Trade permit application- completed
 - o State of Georgia Trade Contractors License
 - o Current Business License
- Temporary Power Request- Electrical
 - o Required for ALL New Power Request
 - o Temporary Power Release Affidavit
- Retaining Wall
 - o Retaining Wall Permit Application – Completed
 - o 3 Sets Drawings (Engineered if required)
 - o 3 Sets Site Plans, showing proposed wall location – drawn to scale

- Retaining wall indemnification form- Completed
- River corridor Properties require a hold and release Affidavit
- Current business license

- Demolition Permit
 - Demolition application – completed
 - Land Disturbance Permit application completed-
 - Refer to land disturbance permit for requirements
- Land Disturbance Permit
 - See Checklist on Land Disturbance Permit Application
- ✓ Sign – Stand Alone (Monument & Wall Sign)
 - See Sign permit Application
- Gas pressure Test – Mechanical/ Plumbing
 - See Re- establishing Service Procedure
 - See Fuel Line Inspection Form (completed by staff)

CELL TOWER ELECTRICAL

- 3 Sets of plans and structural analysis
- Business License
- When required (State license)

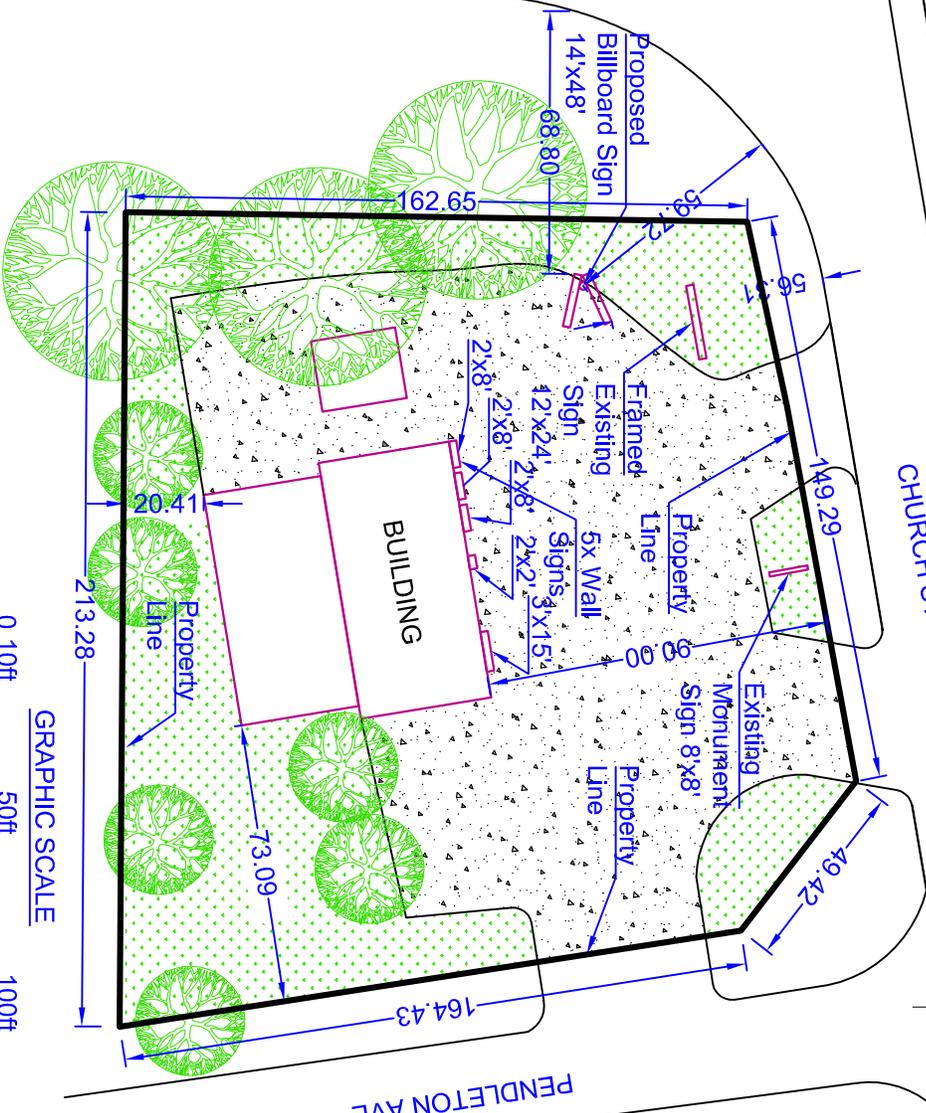
I-285

I-285

I-285 EXIT

CHURCH ST

PENDLETON AVE

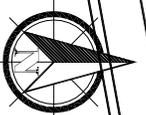


Wall Sign sq ft total: 97 SF
 Monument Sign sq ft: 64 SF
 Framed Freestanding sign: 288 SF
 Total sq ft of signage on property: 449 SF



GRAPHIC SCALE

Railroad Outdoor, LLC
 Property Owner's name: Rezwan Ahmad and Rafiq Ahmad
 Property Address: 3611 Church St
 City : Clarkston, GA 30021
 Zoning= NC-1 Neighborhood Commercial.
 Scale 1"=50'



WEBB, KLASE & LEMOND, LLC

ATTORNEYS AT LAW

1900 THE EXCHANGE, S.E. • SUITE 480 • ATLANTA, GEORGIA 30339

(770) 444-9325 • (770) 217-9950 (facsimile)

Author's Direct Dial:
(770) 444-0773

Email Address:
Adam@WebbLLC.com

September 16, 2020

VIA E-MAIL & U.S. MAIL

Shawanna N. Qawiy, MPA, MSCM
Planning & Development Director
City of Clarkston
1055 Rowland Street
Clarkston, GA 30021
sqawiy@cityofclarkston.com

Re: Sign Applications for Railroad Outdoor, LLC

Dear Ms. Qawiy:

I write to you in your capacity as Director of Planning and Development for the City of Clarkston on behalf of my client Railroad Outdoor, LLC ("Railroad"). Pursuant to Section 15.5-26(b)(1) of the Clarkston Code of Ordinances, please accept this letter as Railroad's written notice of appeal from the City's denial of my client's four sign applications. Based on my review of the City's denial (Exh. A hereto) and the Chapter 15.5 Signs of the City's Code of Ordinances, I wanted to outline my client's arguments on appeal. These articulated grounds for appeal are not exhaustive, and Railroad reserves the right to present additional arguments prior to and at the City Council appeal hearing.

All four of my client's sign applications were denied on the grounds that "Pole signs are not permitted in the City of Clarkston." Denial of my client's applications on this basis was incorrect for several reasons. First, as you note in your September 14 email, all four of my client's applications were for billboards, which are specifically governed by Section 15.5-63 of the Clarkston Code of Ordinances. Your attempt to rely upon a general prohibition on pole signs rather than apply the more specific code section that governs billboards is inconsistent with Georgia law, which provides that the terms of a specific statute govern over those of a more general statute. E.g., Denhardt v. Sparks, 844 S.E.2d 192, 195 (Ga. Ct. App. 2020); Vineville Capital Group, LLC v. McCook, 766 S.E.2d 156, 160 (Ga. Ct. App. 2014) ("the terms of a specific statute govern over those of a more general statute"); also Bellsouth Telecommunications, LLC v. Cobb County, 824 S.E.2d 233, 239 (Ga. 2019) ("the more specific statute governs over the more general one"). Had you properly applied the more specific billboard regulation, the basis of denial would not have been applicable.

Section 15.5-63 allows billboards in the City of Clarkston that are 672 square feet in sign area and 50 feet in height, so long as the billboards are on parcels zoned RC, NC-1, NC-2, TC, or I; are located on parcels adjacent to US Highway 78 or Interstate 285 and oriented thereto; and comply with the standards set by Georgia Department of Transportation as to the use of digital technology. See Section 15.5-63(a)-(g). My client's applications meet all of these criteria and should have been approved. Railroad is aware of several billboards that have been erected in Clarkston despite the ordinance's general prohibition on pole signs. It is plainly not applicable to billboards.

My client's applications for billboards on property owned by CSX Railroad should also have been granted. According to the City's Zoning Map (Exh. B hereto), the railroad property within the City of Clarkston has not been zoned. Therefore, Georgia law requires that my client be allowed to install the requested signs. The general rule is that the owner of property has the right to use their property in any lawful manner. E.g., Cherokee County v. Martin, 253 Ga. App. 395, 396 (2002); Picadilly Place Condo. Ass'n v. Frantz, 210 Ga. App. 676, 678 (1993). Because zoning regulations restrict this right, they must be strictly construed in favor of the property owner, and more specifically, the owner's free use of their property. DeKalb County v. Post Apartment Homes, L.P., 234 Ga. App. 409, 410(1) (1998); Martin, 253 Ga. App. at 396; Glynn County v. Palmatary, 247 Ga. 570, 574 (1981); also Fayette County v. Seagraves, 245 Ga. 196, 197-98, 264 S.E.2d 13 (1980). Consequently, land use limitations must (i) be clearly established, (ii) be enforced only as to their plain and explicit terms, and (iii) any ambiguities therein must be resolved in the owner's favor. E.g., Northside Corp. v. City of Atlanta, 278 Ga. 416 (2005); JWIC, Inc. v. City of Sylvester, 278 Ga. 416, 417 (2004); Martin, 253 Ga. App. at 396; Picadilly, 210 Ga. App. at 678; Bo Fancy Productions v. Rabun County Bd. of Comm's, 267 Ga. 341, 343 (1996); Beugnot v. Coweta County, 231 Ga. App. 715, 722 (1998).

Here, the CSX property is unzoned and thus not restricted by any applicable zoning regulations. Although the CSX property has been inside the City limits for decades, the City has chosen not to zone the property. As such, CSX has never had any opportunity to appear before the City Council to show the City what zoning and land use restrictions would be appropriate for the railroad property. Thus, any restrictions being enforced by the City are invalid and void. E.g., Davidson Mineral Properties, Inc. v. Monroe County, 257 Ga. 215, 217 (1987) (holding county could not restrict use of property). Because the City's official zoning map unambiguously shows that the railroad property has not been zoned, the requested billboards must be allowed.

Beyond these errors in misapplying the City's Code of Ordinances and instances of undue discretion, Railroad also believes that the City's guidelines with respect to billboard signs regulate on the basis of content. Why else would your September 14 email request that my client resubmit renderings of the proposed signs with the proposed wording of the sign. In the decision of Reed v. Town of Gilbert, 135 S. Ct. 2218, 2227 (2015), the Supreme Court held that "[g]overnment regulation of speech is content-based if a law applies to particular speech because of the topic discussed or the idea or message expressed." Id. at 2227 (citations omitted). The

Court deemed this rule to be “commonsense” and requires a reviewing court to determine whether a law “‘on its face’ draws distinctions based on the message a speaker conveys.” Id.

The Court then devoted several pages of its opinion to rejecting the rationales of the lower courts for finding that the law was content-neutral. Id. at 2227-31. For instance, the Court found that the government’s motives in adopting the law are irrelevant if the law regulates by content on its face. Id. at 2228 (“Innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech”). The Court also noted that “a speech regulation targeted at specific subject matter is content-based even if it does not discriminate among viewpoints within that subject matter.” Id. at 2230.

The Court then analyzed whether the content-based law could survive strict scrutiny, “which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.” Id. at 2231 (citations omitted). The Court held that the law could not survive strict scrutiny because, even if the town’s interests in traffic safety and aesthetics were considered compelling governmental interests, the code was “hopelessly underinclusive.” Id. (noting that signs bearing certain messages were “no greater an eyesore” than other types of signs, as well as the lack of evidence that signs bearing some messages are more detrimental to traffic safety than signs conveying favored content).

Since Reed, courts have *repeatedly* recognized that distinguishing between signs based on content is unconstitutional. For example, in Thomas v. Schroer, 116 F.3d 869 (W.D. Tenn. 2015), a court relied upon Reed to enjoin the Tennessee Department of Transportation from enforcing state sign laws that subjected off-premise signs to more regulation than on-premise signs. Id. at 875-76. This decision was affirmed by the Sixth Circuit Court of Appeals in Thomas v. Bright, 937 F.3d 721 (6th Cir. 2019), which held that the content-based nature of the sign regulations post-Reed was “neither a close call nor a difficult question.” Id. at 729, 733 (“Tennessee’s Billboard Act contains a non-severable regulation of speech based on the content of the message. Applied to [the plaintiff’s] billboard, it is, therefore, a content-based regulation of non-commercial speech, which subjects it to strict scrutiny”). The State of Kentucky’s sign regulations were just thrown out on the same basis as the Thomas case. See L.D. Mgmt. Co. v. Thomas, 2020 WL 1978387, at *4 (W.D. Ky. Apr. 24, 2020).

Even more recently, the Fifth Circuit Court of Appeals weighed in on this issue. In Reagan National Advertising, Inc. v. City of Austin, __ F.3d __, 2020 WL 5015455 (5th Cir. Aug. 25, 2020), two sign companies filed applications to convert existing off-premise signs (a/k/a billboards) to digital technology. The city denied the applications because its ordinance did not allow off-premise signs to be digitized (even though signs bearing on-premise content could be digitized). The sign companies sued arguing the ordinance was unconstitutional pursuant to Reed but the district court granted judgment in favor of the city. The Fifth Circuit reversed, finding the ordinance content-based and unconstitutional under Reed. The court noted that “to determine whether a sign is on-premises or off-premises, one must read the sign and ask: does it advertise ‘a business, person, activity, goods, products, or services not located on the site

where the sign is installed, or that directs persons to any location not on that site.” Id. at *6. This fact rendered the code content-based and unconstitutional. Id. at *6-11. The City’s admitted intent to review the content on Railroad’s proposed signs as part of the review process is similarly unconstitutional.

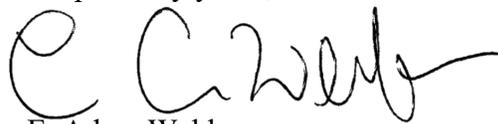
Moreover, the City’s strict regulation of signs in general runs afoul of the Georgia Supreme Court’s requirement that governmental bodies employ the “least restrictive means” when regulating speech activity. E.g., Coffey v. Fayette County, 279 Ga. 111, 111 (2005) (“Coffey I”); Statesboro Publ’g Co. v. City of Sylvania, 271 Ga. 92, 95-96 (1999). Under this standard, cities and counties must carry a heavy burden in order to justify their sign restrictions. Coffey v. Fayette County, 280 Ga. 656, 657-58 (2006). In order to meet this high threshold, the Georgia Supreme Court requires that evidence be presented to support the regulations. Id. This is because Georgia law is the most protective in the nation toward the use of signs for free speech activity. Coffey I, 279 Ga. at 111 (“This Court has interpreted the Georgia Constitution to provide even broader protection than the First Amendment”). Clarkston cannot meet this strict standard as to its Sign Ordinance.

We will also contend that the City’s zoning procedures, Sign Ordinance, zoning code, and/or zoning map have been adopted in an improper manner. Georgia’s Zoning Procedures Law is mandatory and strict compliance is required. We have made requests for the necessary documentation simultaneously herewith and will supplement this appeal upon receipt.

Under Georgia law an application must be granted if the ordinance is invalid for any reason. E.g., Tilley Properties, Inc. v. Bartow County, 261 Ga. 153, 165 (1991) (holding that “[w]here, as in this case, the zoning ordinance is invalid, there is no valid restriction on the property, and the appellant has the right under the law to use the property as it so desires”); Davidson Mineral Props., 257 Ga. at 216-17 (invalidating basis of denial and then mandating that applicant was authorized to proceed with proposed use). As such, Railroad is entitled to the requested permits.

If you have any questions regarding this appeal or need any additional information regarding the same, please do not hesitate to contact me. I look forward to the hearing in front of the City Council.

Respectfully yours,



E. Adam Webb

EAW/ss

Attachments/Enclosures

Exhibit “A”

From: Shawanna Qawiy <sqawiy@cityofclarkston.com>

Sent: Monday, September 14, 2020 4:03 PM

To: kshaw@railroadoutdoor.com

Subject: CSX Sign Permit Requests

Good Day,

The City is in receipt of your request for sign permits.

A review of the four (4) sign permit applications from Railroad Outdoor, LLC shows that all of the proposed signs will be located on poles.

Poles signs are prohibited in the City of Clarkston;

1. 3611 Church Street- Pole Sign (Billboard Sign)
 - a. Pole signs are not permitted in the City of Clarkston.
2. 3874 East Ponce de Leon Avenue (Billboard Sign)
 - a. Pole Signs are not permitted in the City of Clarkston.
3. CSX Outside LED I-285(Billboard)
 - a. Pole Signs are not permitted in the City of Clarkston.
4. CSX Inside LED I-285 (Billboard)
 - a. Pole Signs are not permitted in the City of Clarkston.

Therefore, the submitted applications are DENIED.

You may resubmit the applications for review with the applicable required documents and information. Please include the following for each sign (location/type) request;

1. Completion of the sign permit application (page 2-b) with all related dimension(s) listed.
2. Actual (real) colored renderings of the proposed sign on a site plan (at the actual location) with the proposed lettering/wording.
3. Completed Hold Harmless Form (attached) for each location.
4. Invoice for each sign location.

If you have any questions or concerns, please contact me.

Thank you.

Shawanna N. Qawiy, MPA, MSCM
Planning & Development Director



1055 Rowland St. | Clarkston, GA 30021

(O) 404-296-6489

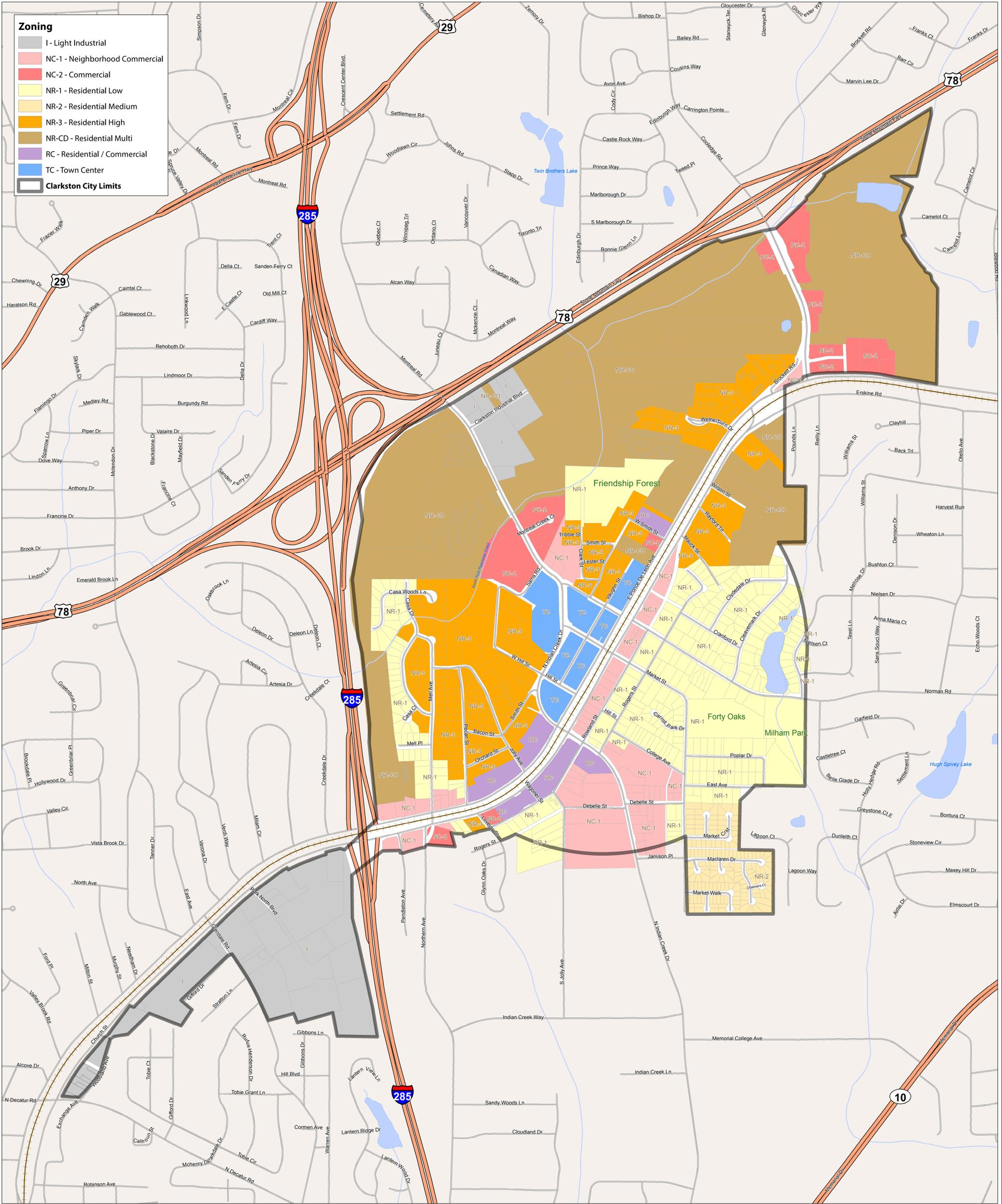
(F) 404-296-6480

SQawiy@cityofclarkston.com

Exhibit “B”

ZONING - CITY OF CLARKSTON, GA

- Zoning**
- I - Light Industrial
 - NC-1 - Neighborhood Commercial
 - NC-2 - Commercial
 - NR-1 - Residential Low
 - NR-2 - Residential Medium
 - NR-3 - Residential High
 - NR-CD - Residential Multi
 - RC - Residential / Commercial
 - TC - Town Center
 - Clarkston City Limits





September 22, 2020

VIA FIRST CLASS MAIL
AND EMAIL: adam@webbllc.com

E. Adam Webb, Esq.
Webb, Klase & Lemond, LLC
1900 The Exchange, SE
Suite 480
Atlanta, GA 30339

RE: Billboard Sign Applications by Railroad Outdoor, LLC

Dear Mr. Webb:

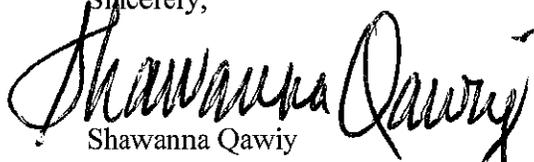
Thank you for your letter dated September 16, 2020. In light of your letter, the City of Clarkston has reevaluated the four sign applications submitted by Railroad Outdoor, LLC. We agree that we prematurely denied the applications based on the prohibition of pole signs.

Per your request, we have reviewed the four applications anew, keeping in mind your suggestion to look for the most specific applicable regulations. In so doing, we found several specific grounds requiring denial of each of the four applications. Please find enclosed documents reflecting the City Manager's official decision with regard to each application.

We will consider your September 16th letter to constitute written appeals of the four revised permit denials enclosed herewith. The Clarkston City Council will hear appeals of the four sign permit denials at its next regular meeting, which will be held on **October 6, 2020 beginning at 7:00 p.m.** City Code Sec. 15.5-26(b).

Due to Covid-19, this meeting will be held via Zoom pursuant to O.C.G.A. § 50-14-1(g). You may find instructions for joining the meeting by Zoom at clarkstonga.gov. If you would like to submit any documents for consideration by the City Council in connection with these appeals, please email them to City Clerk Tracy Ashby at tashby@clarkstonga.gov.

Sincerely,


Shawanna Qawiy
Clarkston Planning & Zoning Director

cc: Kelly Shaw
Mike Fitzgerald
Robin Gomez, City Manager
Tracy Ashby, City Clerk



**CITY of CLARKSTON
SIGN PERMIT REVIEW**

Applicant's Name: Kelly Shaw Railroad Outdoor LLC PO Box 250633 Atlanta, GA 30325 Phone No.: 678.754.8630 Email: kshaw@railroadoutdoor.com	Address: 3611 Church Street, Clarkston, GA 30021 Zoning District: NC-1 Low Density Neighborhood Commercial District
Property Owners Name(s) and Address: Rezwan Ahmad and Rafiq Ahmad / 3611 Church Street	A Lease Agreement with Railroad Outdoor LLC was provided with the application

DESCRIPTION OF REQUESTED SIGN(S)

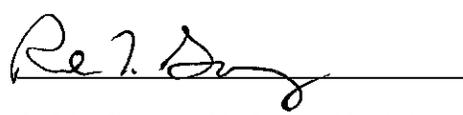
BILLBOARD SIGN : 14' x 48' FF 20' VEE @50' OAH Billboard Sign

The applicant is requesting to erect a 14' x 48' FF 20' VEE @50' OAH Billboard Sign on the property located at 3611 Church Street.

A 14' x 48' full flagged (pole at point) unit with 20'VEE and 50' over-all height with a drilled foundation base on 150 psf/ft. (x2) soils. Estimated size: 6' x 25' with approximately 17 yards of concrete.

CITY MANAGER'S DECISION: DENIAL

- Reasons for decision:**
- Billboard signs are prohibited within 500 feet of residential parcels. City Code Sec. 15.5-63(f). The proposed location is within 500 feet of residential property including, but not limited to, residential properties on Pendleton Road just south of the subject property, the Highland Village Apartments north/northeast of the subject property and various residences on Creekdale Drive west/northwest of the subject property
 - Secondly, Billboard signs are prohibited within 1000 feet of other billboards. City Code Sec. 15.5-63(e). The other three billboard signs proposed by Railroad Outdoor are within 1000 feet of this location.

 Date: 9.22.2020

Robin Gomez, Clarkston City Manager

CITY OF CLARKSTON

CLARKSTON CITY COUNCIL MEETING

BUSINESS AGENDA / MINUTES

MEETING DATE: September 29, 2020

ITEM NO: E10

ACTION TYPE:
BUSINESS APPEAL

HEARING TYPE:
Work Session

SUBJECT: Appeal of City Denial of Sign Permit Application from Railroad Outdoor LLC, to Erect a 14' x 48' FF 20' VEE @ 50' OAH Billboard Sign on the Property Located at 3874 E Ponce de Leon Ave.

DEPARTMENT: City Administration

PUBLIC HEARING: YES NO

ATTACHMENT: YES NO
Pages: 17

INFORMATION CONTACT: ROBIN I. GOMEZ,
PHONE NUMBER: 404-296-6489

PURPOSE: City Council to discuss/review appeal by Railroad Outdoor LLC of City of Clarkston City Manager's denial of a sign permit application from Railroad Outdoor LLC to erect a 14' x 48' FF 20' VEE @ 50' OAH billboard sign on the property located at 3874 E Ponce de Leon Ave.

BACKGROUND/IMPACT:

City received referenced sign permit application (copy enclosed) on September 10, 2020, and subsequently submitted a denial on September 14, 2020 (copy enclosed), based on the City's prohibition of pole signs. Applicant submitted a reply letter on September 16, 2020 (copy enclosed), appealing the City's decision, suggesting that the City look for the most specific applicable regulations for the denial. Our review found several specific City code references requiring denial of the application, specifically:

1. Billboard signs are prohibited within 500 feet of residential parcels (City Code, Sec 15.5-63f).
2. Billboard signs are prohibited within 1,000 feet of other billboards (City Code, Sec 15.5-63e).

City subsequently provided the applicant the specific denial reasons in a letter dated September 22, 2020 (copy enclosed) as well as advising the applicant of the appeal date/time, October 6, 2022, beginning at 7 pm.

RECOMMENDATION:

Council to deny applicant's sign permit application appeal.



SIGN PERMIT APPLICATION

Form # 200-SP

This document must be completed in full by the Applicant. Please see Applicant Instructions for complete submittal requirements.

Date of Application 9/04/20
 Applicant Name Kelly Shaw
 Business Name Railroad Outdoor LLC
 Business Address P.O. Box 250633 Atlanta, GA 30325
 Business Phone Number 678-754-8630
 Alternate Phone Number 800-977-6889
 Email Address kshaw@railroadoutdoor.com
 Is this a commercial or residential use? Commercial Residential
 Zoning District NC-1
 Contractor Erecting Sign (required) Railroad Outdoor LLC
 Contractor Address P.O. Box 250633 Atlanta, GA 30325
 Contractor Business Phone 800-977-6889
 Contractor Email Address kshaw@railroadoutdoor.com
 Address where Sign will be Erected 3874 E Ponce De Leon Ave Clarkston 16A
 Description of Sign Position in Relation to Nearest Building See Site Plan

FOR OFFICE USE ONLY			
<i>Permanent sign application fee is 10% of value of the sign to a maximum of \$500.00</i>			
Payment Type:	Check # _____	Cash _____	Money Order _____
Amount Paid:	\$ _____	Payment Received by _____	
Comments:			

Submittal Instructions (see Applicant Instructions for full requirements):

- Please make sure sign design conforms to City of Clarkston Code of Ordinances Section 15.5-1 et seq., available online at www.cityofclarkston.com before constructing sign.
- Do not construct sign prior to issuance of permit.
- Completed application and plans must be in the City Clerk's office no later than 5:00pm on the first day of the month in order to be on that month's Zoning and Review Committee agenda.
- If application is incomplete, it will not be considered for approval.
- Filing fee must be submitted with the application.
- Applicant may appeal any decision to the City Council.
- Please include **six (6) copies** of the following items with the application:

a. Plans and specifications which must include :	Included
- Site plan of the building and all proposed and existing sign locations, including _____	



SIGN PERMIT APPLICATION

Form # 200-SP

signs both attached to the building as well as any detached monument type signs. Include dimensions of the building face to which the sign will be attached.

see site plan

- If the sign will be attached to a shopping center, strip center and/or as part of a complex of connected buildings, it must be uniform in location, size, and color of lettering to the adjacent existing signs. If these conditions apply to your situation, **you must provide photographs of the signs located adjacent to your proposed sign.** If there is a major tenant in the shopping center, include a photograph and dimensions of the major tenant sign. If there is no major tenant, please directly state this.

b. Sign dimensions and details, **including** a drawing and the following information:

Attached signs:

- Overall size of the building façade
- Size of the sign
- Bolt size (no less than 3/8") and connection types and details
- Color and size of font lettering (no more than 4" on attached signs)
- Materials to be used
- Distance of the sign from the ground
- Amount of projection of the sign from the building

Detached monument signs: Billboard

- Foundation details
- Sign colors
- Sign materials
- Distance of the sign from the ground

see sign plans attached

Black

Steel

50'

c. The following additional documents

- Written consent of the owner of the building or land
- Electrical wiring diagrams where applicable
 - Insured electrical contractor information
- Copy of stress sheets
- Dead loads and wind pressure in any direction
- Hold harmless agreement to save City from damages
- Estimated/Actual Cost of Sign (copy of invoice)

8. Your application will not be accepted or reviewed until all required submittal items are received.

9. Your application will be reviewed by the Planning and Zoning Commission on _____ (date). The Planning and Zoning Commission meetings are held at City Hall.



SIGN PERMIT APPLICATION

Form # 200-SP

CONDITIONS

By submitting this Application, Applicant agrees to the following conditions which are mandatory for a sign permit in the City:

Insurance Requirement

Applicant must procure, maintain and keep in full force and effect at all times for so long as the sign that is the subject of this application is in place, liability insurance insuring against all third party liability claims and demands for injury to, or death of, persons, or damage to property which arise out of the installation, placement or maintenance of said sign. Such policy of insurance shall insure against any such claim, injury, or loss in an amount not less than \$500,000.00, per occurrence, \$1,000,000.00 General Aggregate for injury (including death) to one or more persons attributable to a single occurrence and for property damage. Such liability insurance may be in the form of general premises liability insurance. A certificate reflecting such insurance coverage shall be provided to the City before the issuance of any sign permit.

Maintenance of Sign

Applicant agrees to maintain said sign in a safe manner, so that it is not a hazard to pedestrian or vehicular traffic, and to conform to all zoning, traffic and safety ordinances of the City of Clarkston with regard to the placing of said sign.

Removal of Sign

The undersigned agrees to remove any sign upon request by the City of Clarkston, in the event it should be deemed by the City Manager to be hazardous to the health, safety and welfare of the public.

SO AGREED:

Applicant Signature [Handwritten Signature] Date 9/09/20

Approval Planning & Zoning Committee:

Print Name _____ Title _____
Signature _____ Date _____

Approval by City Council (When Applicable):

Print Name _____ Title _____
Signature _____ Date _____



City of Clarkston 1055 Rowland Street Clarkston, GA 30021	PERMIT APPLICATION Job Address: <u>3874 East Ponce De Leon Ave Clarkston, GA 30021</u>
---	--

PROPERTY OWNER <u>Yeshi Mart Inc</u>	PHONE
MAILING ADDRESS <u>3874 E Ponce De Leon Ave Clarkston GA 30021</u>	
GENERAL CONTRACTOR/CONTACT PERSON <u>Kelly Shaw</u>	PHONE <u>678-754-8630</u>
CONTRACTOR ADDRESS: City, State, and Zip <u>P.O. Box 350633 Atlanta, GA 30325</u>	LICENSE NUMBER <u>sign erector-traditional exemption</u>
PLUMBING CONTRACTOR	LICENSE NUMBER
ELECTRICAL CONTRACTOR <u>John C Blue</u>	LICENSE NUMBER <u>EN 211757</u>
MECHANICAL CONTRACTOR	LICENSE NUMBER

DESCRIPTION OF WORK: sign erection by caisson footing (see sign plans)

IMPORTANT- COMPLETE ALL ITEMS AND MARK ALL APPLICABLE BOXES

B. PROPOSED PERMIT TYPE <u>RESIDENTIAL</u> <input type="checkbox"/> New Single Family Dwelling <input type="checkbox"/> New Accessory Structure <input type="checkbox"/> Alteration <input type="checkbox"/> Addition <input type="checkbox"/> Accessory Structure-Alteration <input type="checkbox"/> Pool/Hot Tub <input type="checkbox"/> Deck <u>COMMERCIAL</u> <input type="checkbox"/> New Commercial <input type="checkbox"/> Shell Only <input type="checkbox"/> New Multi-Family <input type="checkbox"/> Accessory Structure-New <input type="checkbox"/> Alteration <input type="checkbox"/> Addition <input type="checkbox"/> Accessory Structure-Alteration <input type="checkbox"/> Pool/Hot Tub <u>MISCELLANEOUS</u> <input type="checkbox"/> Electrical Work Only <input type="checkbox"/> Plumbing Work Only <input type="checkbox"/> Mechanical Work Only <input type="checkbox"/> Occupancy <input type="checkbox"/> Retaining Wall <input type="checkbox"/> Demolition <input type="checkbox"/> Sign-Stand Alone <input type="checkbox"/> Sign-Wall <input type="checkbox"/> Cell Tower- Electrical	A. SQUARE FOOTAGE Main Floor _____ Add. Floors _____ Basement _____ Covered Porch _____ Decks _____ Garage _____ Other _____ D. TOTAL VALUE Building Valuation \$ _____ E. CONSTRUCTION TYPE <input type="checkbox"/> Wood Frame <input type="checkbox"/> Structural Steel <input type="checkbox"/> Masonry <input type="checkbox"/> Other _____	J. MISCELLANEOUS Number of stories _____ Lot Size _____ Number of Parking Spaces _____ Setbacks: Required: E: _____ W: _____ N: _____ S: _____ Shown: E: <u>200+</u> W: <u>8+</u> N: <u>100+</u> S: <u>40+</u> G. TYPE OF SEWERAGE DISPOSAL <input type="checkbox"/> Public <input type="checkbox"/> Individual (Septic tank) H. TYPE OF WATER SUPPLY <input type="checkbox"/> Private <input type="checkbox"/> Public I. HEATING FUEL TYPE <input type="checkbox"/> Gas LP or NG <input type="checkbox"/> Electricity <input type="checkbox"/> Solar <input type="checkbox"/> Other _____
F. FEES (check box when paid) <input type="checkbox"/> Permit Fee _____ <input type="checkbox"/> Plan Review _____ <input type="checkbox"/> Trade Fee _____ <input type="checkbox"/> C/O, C/C Fee _____ <input type="checkbox"/> Site Fee _____ <input type="checkbox"/> Other _____ Total Fees _____		

The applicant, his agents and employees shall comply with all the rules, restrictions and requirements of the City and Building Codes governing location, construction and erection of the above proposed work for which the permit is granted. The City or its agents are authorized to order the immediate cessation of construction at anytime a violation of the codes or regulations appears to have occurred. Violation of any of the codes or regulations applicable may result in the revocation of this permit. Building MUST conform with plans, as submitted to the City. Any changes of plans or layout must be approved prior to the changes being made. Any change in the use or occupancy of the building or structure must be approved prior to proceeding with construction.

The applicant is required to call for inspections at various stages of the construction, and in accordance with the aforesaid rule, the applicant shall give the building inspector not less than one day's notice to perform such activities.

In the event construction is not commenced within 180 days of issuance of this permit, then the same is automatically void. Cessation of work for a period of 180 continuous days shall also cause this permit to be void. Permits are not transferable.

I hereby certify that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as an authorized agent, and agree to conform to all applicable laws of the State of Georgia. All information submitted on this application is accurate to the best of my knowledge.

SIGNATURE OF APPLICANT <u>Hebert</u>	APPLICATION DATE <u>9/04/20</u>
APPROVED P&D MANAGER	DATE

COMMERCIAL – NEW CONSTRUCTION

- Building Permit Application – Completed
- 3 Sets of Structural Drawings – (Sealed when Required)
- Digital Copies of Drawings
- DeKalb County Sewer and Water permits
- DeKalb County Watershed Management Pre- Treatment Permit (If installing grease Trap)
- Drawings must show all MEP'S
- State of Georgia Contractors License
- Current Business License
- Certificate of Occupancy- Fee only required with new Certificate of Occupancy
 - o If new - compete the building permit application

COMMERCIAL – ALTERATIONS

- Building Permit Application – Completed
- 3 Sets of Structural Drawings – (Sealed when Required)
- Digital Copies of Drawings
- DeKalb County Sewer and Water permits
- DeKalb County Watershed Management Pre- Treatment Permit (If installing grease Trap)
- Drawings must show all MEP'S
- State of Georgia Contractors License
- Current Business License

MISCELLANEOUS

- Trade Permit Application
 - o Trade permit application- completed
 - o State of Georgia Trade Contractors License
 - o Current Business License
- Temporary Power Request- Electrical
 - o Required for ALL New Power Request
 - o Temporary Power Release Affidavit
- Retaining Wall
 - o Retaining Wall Permit Application – Completed
 - o 3 Sets Drawings (Engineered if required)
 - o 3 Sets Site Plans, showing proposed wall location – drawn to scale

- Retaining wall indemnification form- Completed
- River corridor Properties require a hold and release Affidavit
- Current business license

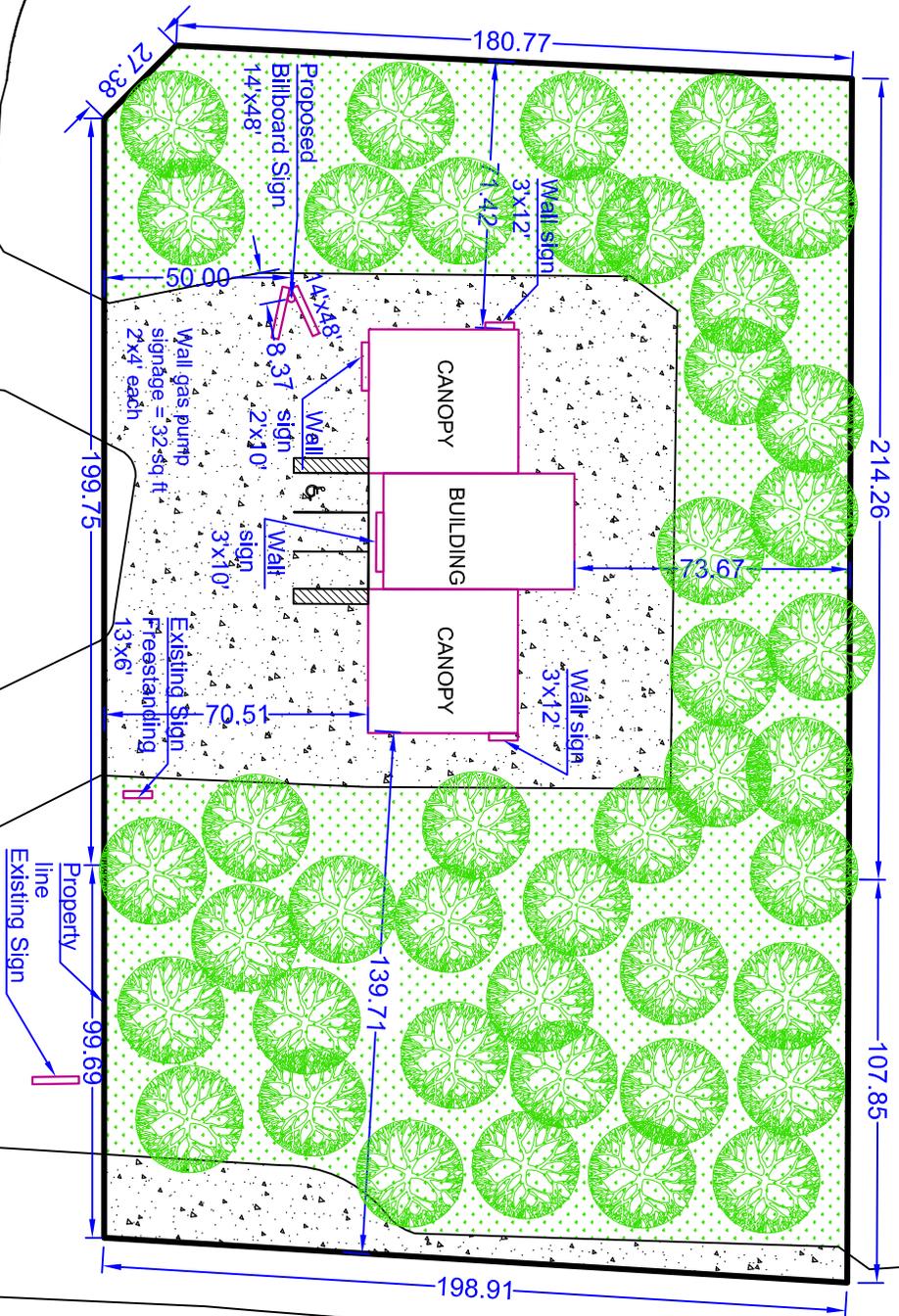
- Demolition Permit
 - Demolition application – completed
 - Land Disturbance Permit application completed-
 - Refer to land disturbance permit for requirements
- Land Disturbance Permit
 - See Checklist on Land Disturbance Permit Application
- Sign – Stand Alone (Monument & Wall Sign)
 - See Sign permit Application
- Gas pressure Test – Mechanical/ Plumbing
 - See Re- establishing Service Procedure
 - See Fuel Line Inspection Form (completed by staff)

CELL TOWER ELECLTRICAL

- 3 Sets of plans and structural analysis
- Business License
- When required (State license)

Exit to I-285

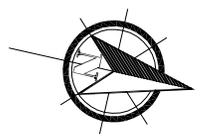
East Ponce de Leon Ave



Existing Wall Sign sq ft: 154 SF
Existing Freestanding Sign sq ft: 78 SF
Total sq ft of signage on property: 232 SF



GRAPHIC SCALE



Railroad Outdoor, LLC
Property Owner's name: YESHI MART INC.
Property Address: 3874 E Ponce De Leon Ave
Clarkston, GA 30021
City : Clarkston
Zoning= NC-1 Neighborhood Commercial.
Scale 1"= 50'

WEBB, KLASE & LEMOND, LLC

ATTORNEYS AT LAW

1900 THE EXCHANGE, S.E. • SUITE 480 • ATLANTA, GEORGIA 30339

(770) 444-9325 • (770) 217-9950 (facsimile)

Author's Direct Dial:
(770) 444-0773

Email Address:
Adam@WebbLLC.com

September 16, 2020

VIA E-MAIL & U.S. MAIL

Shawanna N. Qawiy, MPA, MSCM
Planning & Development Director
City of Clarkston
1055 Rowland Street
Clarkston, GA 30021
sqawiy@cityofclarkston.com

Re: Sign Applications for Railroad Outdoor, LLC

Dear Ms. Qawiy:

I write to you in your capacity as Director of Planning and Development for the City of Clarkston on behalf of my client Railroad Outdoor, LLC (“Railroad”). Pursuant to Section 15.5-26(b)(1) of the Clarkston Code of Ordinances, please accept this letter as Railroad’s written notice of appeal from the City’s denial of my client’s four sign applications. Based on my review of the City’s denial (Exh. A hereto) and the Chapter 15.5 Signs of the City’s Code of Ordinances, I wanted to outline my client’s arguments on appeal. These articulated grounds for appeal are not exhaustive, and Railroad reserves the right to present additional arguments prior to and at the City Council appeal hearing.

All four of my client’s sign applications were denied on the grounds that “Pole signs are not permitted in the City of Clarkston.” Denial of my client’s applications on this basis was incorrect for several reasons. First, as you note in your September 14 email, all four of my client’s applications were for billboards, which are specifically governed by Section 15.5-63 of the Clarkston Code of Ordinances. Your attempt to rely upon a general prohibition on pole signs rather than apply the more specific code section that governs billboards is inconsistent with Georgia law, which provides that the terms of a specific statute govern over those of a more general statute. E.g., Denhardt v. Sparks, 844 S.E.2d 192, 195 (Ga. Ct. App. 2020); Vineville Capital Group, LLC v. McCook, 766 S.E.2d 156, 160 (Ga. Ct. App. 2014) (“the terms of a specific statute govern over those of a more general statute”); also Bellsouth Telecommunications, LLC v. Cobb County, 824 S.E.2d 233, 239 (Ga. 2019) (“the more specific statute governs over the more general one”). Had you properly applied the more specific billboard regulation, the basis of denial would not have been applicable.

Section 15.5-63 allows billboards in the City of Clarkston that are 672 square feet in sign area and 50 feet in height, so long as the billboards are on parcels zoned RC, NC-1, NC-2, TC, or I; are located on parcels adjacent to US Highway 78 or Interstate 285 and oriented thereto; and comply with the standards set by Georgia Department of Transportation as to the use of digital technology. See Section 15.5-63(a)-(g). My client's applications meet all of these criteria and should have been approved. Railroad is aware of several billboards that have been erected in Clarkston despite the ordinance's general prohibition on pole signs. It is plainly not applicable to billboards.

My client's applications for billboards on property owned by CSX Railroad should also have been granted. According to the City's Zoning Map (Exh. B hereto), the railroad property within the City of Clarkston has not been zoned. Therefore, Georgia law requires that my client be allowed to install the requested signs. The general rule is that the owner of property has the right to use their property in any lawful manner. E.g., Cherokee County v. Martin, 253 Ga. App. 395, 396 (2002); Picadilly Place Condo. Ass'n v. Frantz, 210 Ga. App. 676, 678 (1993). Because zoning regulations restrict this right, they must be strictly construed in favor of the property owner, and more specifically, the owner's free use of their property. DeKalb County v. Post Apartment Homes, L.P., 234 Ga. App. 409, 410(1) (1998); Martin, 253 Ga. App. at 396; Glynn County v. Palmatary, 247 Ga. 570, 574 (1981); also Fayette County v. Seagraves, 245 Ga. 196, 197-98, 264 S.E.2d 13 (1980). Consequently, land use limitations must (i) be clearly established, (ii) be enforced only as to their plain and explicit terms, and (iii) any ambiguities therein must be resolved in the owner's favor. E.g., Northside Corp. v. City of Atlanta, 278 Ga. 416 (2005); JWIC, Inc. v. City of Sylvester, 278 Ga. 416, 417 (2004); Martin, 253 Ga. App. at 396; Picadilly, 210 Ga. App. at 678; Bo Fancy Productions v. Rabun County Bd. of Comm's, 267 Ga. 341, 343 (1996); Beugnot v. Coweta County, 231 Ga. App. 715, 722 (1998).

Here, the CSX property is unzoned and thus not restricted by any applicable zoning regulations. Although the CSX property has been inside the City limits for decades, the City has chosen not to zone the property. As such, CSX has never had any opportunity to appear before the City Council to show the City what zoning and land use restrictions would be appropriate for the railroad property. Thus, any restrictions being enforced by the City are invalid and void. E.g., Davidson Mineral Properties, Inc. v. Monroe County, 257 Ga. 215, 217 (1987) (holding county could not restrict use of property). Because the City's official zoning map unambiguously shows that the railroad property has not been zoned, the requested billboards must be allowed.

Beyond these errors in misapplying the City's Code of Ordinances and instances of undue discretion, Railroad also believes that the City's guidelines with respect to billboard signs regulate on the basis of content. Why else would your September 14 email request that my client resubmit renderings of the proposed signs with the proposed wording of the sign. In the decision of Reed v. Town of Gilbert, 135 S. Ct. 2218, 2227 (2015), the Supreme Court held that "[g]overnment regulation of speech is content-based if a law applies to particular speech because of the topic discussed or the idea or message expressed." Id. at 2227 (citations omitted). The

Court deemed this rule to be “commonsense” and requires a reviewing court to determine whether a law “‘on its face’ draws distinctions based on the message a speaker conveys.” Id.

The Court then devoted several pages of its opinion to rejecting the rationales of the lower courts for finding that the law was content-neutral. Id. at 2227-31. For instance, the Court found that the government’s motives in adopting the law are irrelevant if the law regulates by content on its face. Id. at 2228 (“Innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech”). The Court also noted that “a speech regulation targeted at specific subject matter is content-based even if it does not discriminate among viewpoints within that subject matter.” Id. at 2230.

The Court then analyzed whether the content-based law could survive strict scrutiny, “which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.” Id. at 2231 (citations omitted). The Court held that the law could not survive strict scrutiny because, even if the town’s interests in traffic safety and aesthetics were considered compelling governmental interests, the code was “hopelessly underinclusive.” Id. (noting that signs bearing certain messages were “no greater an eyesore” than other types of signs, as well as the lack of evidence that signs bearing some messages are more detrimental to traffic safety than signs conveying favored content).

Since Reed, courts have *repeatedly* recognized that distinguishing between signs based on content is unconstitutional. For example, in Thomas v. Schroer, 116 F.3d 869 (W.D. Tenn. 2015), a court relied upon Reed to enjoin the Tennessee Department of Transportation from enforcing state sign laws that subjected off-premise signs to more regulation than on-premise signs. Id. at 875-76. This decision was affirmed by the Sixth Circuit Court of Appeals in Thomas v. Bright, 937 F.3d 721 (6th Cir. 2019), which held that the content-based nature of the sign regulations post-Reed was “neither a close call nor a difficult question.” Id. at 729, 733 (“Tennessee’s Billboard Act contains a non-severable regulation of speech based on the content of the message. Applied to [the plaintiff’s] billboard, it is, therefore, a content-based regulation of non-commercial speech, which subjects it to strict scrutiny”). The State of Kentucky’s sign regulations were just thrown out on the same basis as the Thomas case. See L.D. Mgmt. Co. v. Thomas, 2020 WL 1978387, at *4 (W.D. Ky. Apr. 24, 2020).

Even more recently, the Fifth Circuit Court of Appeals weighed in on this issue. In Reagan National Advertising, Inc. v. City of Austin, __ F.3d __, 2020 WL 5015455 (5th Cir. Aug. 25, 2020), two sign companies filed applications to convert existing off-premise signs (a/k/a billboards) to digital technology. The city denied the applications because its ordinance did not allow off-premise signs to be digitized (even though signs bearing on-premise content could be digitized). The sign companies sued arguing the ordinance was unconstitutional pursuant to Reed but the district court granted judgment in favor of the city. The Fifth Circuit reversed, finding the ordinance content-based and unconstitutional under Reed. The court noted that “to determine whether a sign is on-premises or off-premises, one must read the sign and ask: does it advertise ‘a business, person, activity, goods, products, or services not located on the site

where the sign is installed, or that directs persons to any location not on that site.” Id. at *6. This fact rendered the code content-based and unconstitutional. Id. at *6-11. The City’s admitted intent to review the content on Railroad’s proposed signs as part of the review process is similarly unconstitutional.

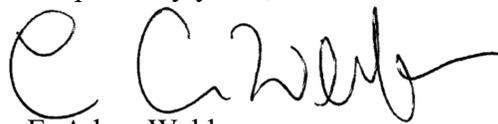
Moreover, the City’s strict regulation of signs in general runs afoul of the Georgia Supreme Court’s requirement that governmental bodies employ the “least restrictive means” when regulating speech activity. E.g., Coffey v. Fayette County, 279 Ga. 111, 111 (2005) (“Coffey I”); Statesboro Publ’g Co. v. City of Sylvania, 271 Ga. 92, 95-96 (1999). Under this standard, cities and counties must carry a heavy burden in order to justify their sign restrictions. Coffey v. Fayette County, 280 Ga. 656, 657-58 (2006). In order to meet this high threshold, the Georgia Supreme Court requires that evidence be presented to support the regulations. Id. This is because Georgia law is the most protective in the nation toward the use of signs for free speech activity. Coffey I, 279 Ga. at 111 (“This Court has interpreted the Georgia Constitution to provide even broader protection than the First Amendment”). Clarkston cannot meet this strict standard as to its Sign Ordinance.

We will also contend that the City’s zoning procedures, Sign Ordinance, zoning code, and/or zoning map have been adopted in an improper manner. Georgia’s Zoning Procedures Law is mandatory and strict compliance is required. We have made requests for the necessary documentation simultaneously herewith and will supplement this appeal upon receipt.

Under Georgia law an application must be granted if the ordinance is invalid for any reason. E.g., Tilley Properties, Inc. v. Bartow County, 261 Ga. 153, 165 (1991) (holding that “[w]here, as in this case, the zoning ordinance is invalid, there is no valid restriction on the property, and the appellant has the right under the law to use the property as it so desires”); Davidson Mineral Props., 257 Ga. at 216-17 (invalidating basis of denial and then mandating that applicant was authorized to proceed with proposed use). As such, Railroad is entitled to the requested permits.

If you have any questions regarding this appeal or need any additional information regarding the same, please do not hesitate to contact me. I look forward to the hearing in front of the City Council.

Respectfully yours,

A handwritten signature in black ink, appearing to read "E. Adam Webb". The signature is fluid and cursive, with a long horizontal stroke at the end.

E. Adam Webb

EAW/ss

Attachments/Enclosures

Exhibit “A”

From: Shawanna Qawiy <sqawiy@cityofclarkston.com>

Sent: Monday, September 14, 2020 4:03 PM

To: kshaw@railroadoutdoor.com

Subject: CSX Sign Permit Requests

Good Day,

The City is in receipt of your request for sign permits.

A review of the four (4) sign permit applications from Railroad Outdoor, LLC shows that all of the proposed signs will be located on poles.

Poles signs are prohibited in the City of Clarkston;

1. 3611 Church Street- Pole Sign (Billboard Sign)
 - a. Pole signs are not permitted in the City of Clarkston.
2. 3874 East Ponce de Leon Avenue (Billboard Sign)
 - a. Pole Signs are not permitted in the City of Clarkston.
3. CSX Outside LED I-285(Billboard)
 - a. Pole Signs are not permitted in the City of Clarkston.
4. CSX Inside LED I-285 (Billboard)
 - a. Pole Signs are not permitted in the City of Clarkston.

Therefore, the submitted applications are DENIED.

You may resubmit the applications for review with the applicable required documents and information. Please include the following for each sign (location/type) request;

1. Completion of the sign permit application (page 2-b) with all related dimension(s) listed.
2. Actual (real) colored renderings of the proposed sign on a site plan (at the actual location) with the proposed lettering/wording.
3. Completed Hold Harmless Form (attached) for each location.
4. Invoice for each sign location.

If you have any questions or concerns, please contact me.

Thank you.

Shawanna N. Qawiy, MPA, MSCM
Planning & Development Director



1055 Rowland St. | Clarkston, GA 30021

(O) 404-296-6489

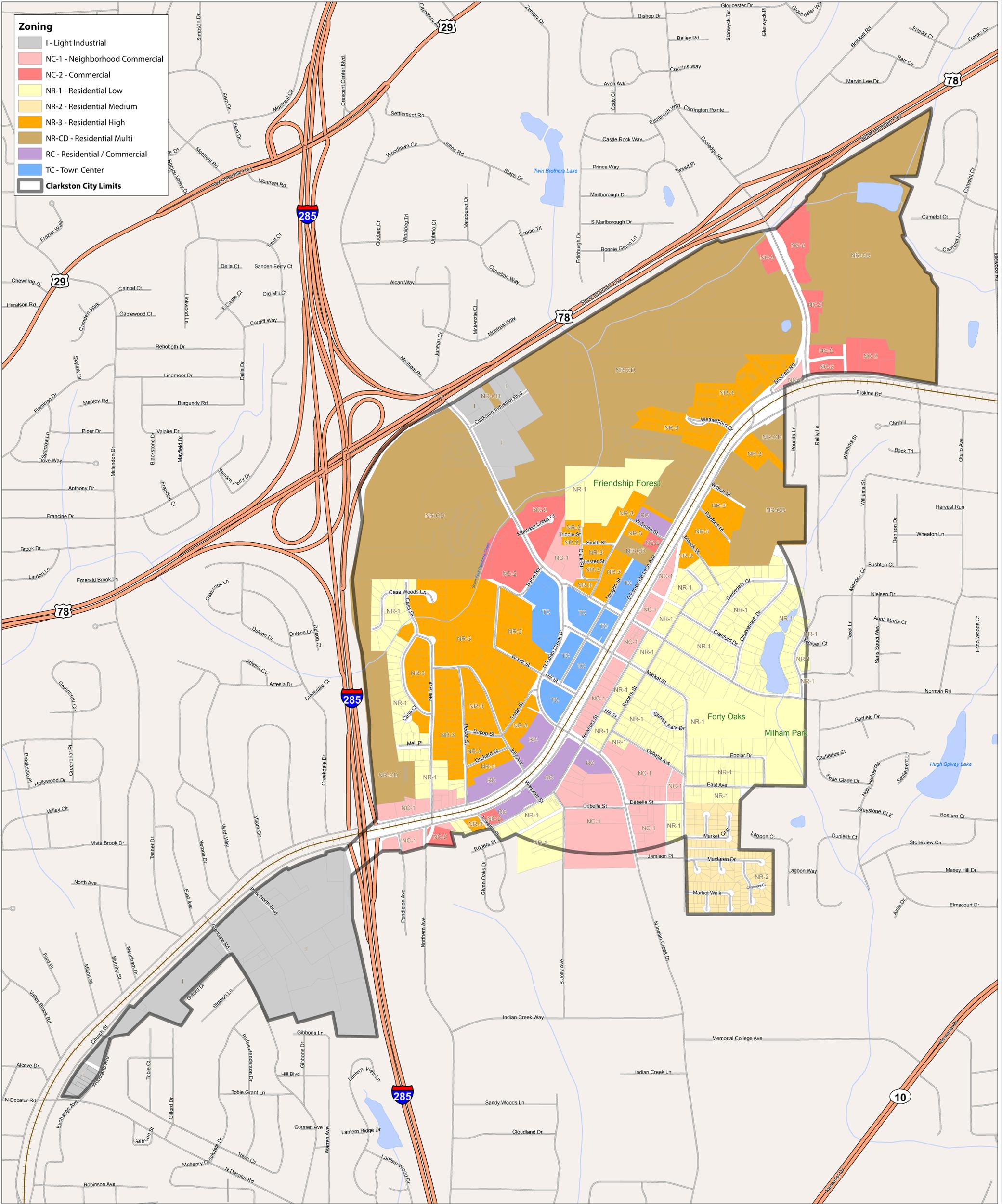
(F) 404-296-6480

SQawiy@cityofclarkston.com

Exhibit “B”

ZONING - CITY OF CLARKSTON, GA

- Zoning**
- I - Light Industrial
 - NC-1 - Neighborhood Commercial
 - NC-2 - Commercial
 - NR-1 - Residential Low
 - NR-2 - Residential Medium
 - NR-3 - Residential High
 - NR-CD - Residential Multi
 - RC - Residential / Commercial
 - TC - Town Center
 - Clarkston City Limits





September 22, 2020

VIA FIRST CLASS MAIL
AND EMAIL: adam@webbllc.com

E. Adam Webb, Esq.
Webb, Klase & Lemond, LLC
1900 The Exchange, SE
Suite 480
Atlanta, GA 30339

RE: Billboard Sign Applications by Railroad Outdoor, LLC

Dear Mr. Webb:

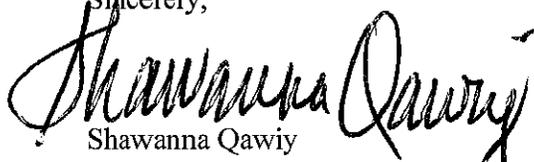
Thank you for your letter dated September 16, 2020. In light of your letter, the City of Clarkston has reevaluated the four sign applications submitted by Railroad Outdoor, LLC. We agree that we prematurely denied the applications based on the prohibition of pole signs.

Per your request, we have reviewed the four applications anew, keeping in mind your suggestion to look for the most specific applicable regulations. In so doing, we found several specific grounds requiring denial of each of the four applications. Please find enclosed documents reflecting the City Manager's official decision with regard to each application.

We will consider your September 16th letter to constitute written appeals of the four revised permit denials enclosed herewith. The Clarkston City Council will hear appeals of the four sign permit denials at its next regular meeting, which will be held on **October 6, 2020 beginning at 7:00 p.m.** City Code Sec. 15.5-26(b).

Due to Covid-19, this meeting will be held via Zoom pursuant to O.C.G.A. § 50-14-1(g). You may find instructions for joining the meeting by Zoom at clarkstonga.gov. If you would like to submit any documents for consideration by the City Council in connection with these appeals, please email them to City Clerk Tracy Ashby at tashby@clarkstonga.gov.

Sincerely,


Shawanna Qawiy
Clarkston Planning & Zoning Director

cc: Kelly Shaw
Mike Fitzgerald
Robin Gomez, City Manager
Tracy Ashby, City Clerk



CITY of CLARKSTON SIGN PERMIT REVIEW

Applicant's Name: Kelly Shaw Railroad Outdoor LLC PO Box 250633 Atlanta, GA 30325 Phone No.: 678.754.8630 Email: kshaw@railroadoutdoor.com	Address: 3874 East Ponce de Leon Avenue, Clarkston, GA 30021 Zoning District: NC-1 Low Density Neighborhood Commercial District
Property Owners Name(s) and Address: Yeshi Mart, Inc. / Henock M. Yerge- 3874 East Ponce de Leon Avenue	A Lease Agreement with Railroad Outdoor, LLC was provided with the application
DESCRIPTION OF REQUESTED SIGN(S)	
<u>BILLBOARD SIGN</u> : 14' x 48' FF 20' VEE @50' OAH Billboard Sign The applicant is requesting to erect a 14' x 48' FF 20' VEE @50' OAH Billboard Sign on the property located at 3874 East Ponce de Leon Avenue. A 14' x 48' full flagged (pole at point) unit with 20'VEE and 50' over-all height with a drilled foundation base on 150 psf/ft. (x2) soils. Estimated size: 6' x 25' with approximately 17 yards of concrete.	
CITY MANAGER'S DECISION: DENIAL	

Reasons for decision:

- Billboard signs are prohibited within 500 feet of residential parcels. City Code Sec. 15.5-63(f). The proposed location is within 500 feet of residential property including, but not limited to, the Highland Village Apartments located immediately north of the subject property, residential properties on Pendleton Road south of the subject property, and various residences on Creekdale Drive west of the subject property
- Secondly, Billboard signs are prohibited within 1000 feet of other billboards. City Code Sec. 15.5-63(e). The other three billboard signs proposed by Railroad Outdoor are within 1000 feet of this location.

Date: 9.22.2020

Robin Gomez, Clarkston City Manager

CITY OF CLARKSTON

CLARKSTON CITY COUNCIL MEETING

BUSINESS AGENDA / MINUTES

MEETING DATE: September 29, 2020

ITEM NO: E11

ACTION TYPE:
BUSINESS APPEAL

HEARING TYPE:
Work Session

SUBJECT: Appeal of City Denial of Sign Permit Application from Railroad Outdoor LLC, to Erect a 14' x 48' FF 20' VEE @ 50' OAH Billboard Sign on the Property Located at the southerly portion of Church St, just outside (East) of I-285.

DEPARTMENT: City Administration

PUBLIC HEARING: YES NO

ATTACHMENT: YES NO
Pages: 17

INFORMATION CONTACT: ROBIN I. GOMEZ,
PHONE NUMBER: 404-296-6489

PURPOSE: City Council to discuss/review appeal by Railroad Outdoor LLC of City of Clarkston City Manager's denial of a sign permit application from Railroad Outdoor LLC to erect a 14' x 48' FF 20' VEE @ 50' OAH billboard sign on the property located at the southerly portion of Church St, just outside of (East) of I-285.

BACKGROUND/IMPACT:

City received referenced sign permit application (copy enclosed) on September 10, 2020, and subsequently submitted a denial on September 14, 2020 (copy enclosed), based on the City's prohibition of pole signs. Applicant submitted a reply letter on September 16, 2020 (copy enclosed), appealing the City's decision, suggesting that the City look for the most specific applicable regulations for the denial. Our review found several specific City code references requiring denial of the application, specifically:

1. Signs are prohibited within public rights of ways and utility easements (City Code, Sec 15.5-41,3).
2. Signs are prohibited within the railroad right of way (City Code, Sec 15.5-41, 4).
3. Billboard signs are only permitted on parcels zoned RC, NC-1, NC-2, TC, or I (City Code, Sec 15.5-63,b). The CSX RR right-of-way is not a parcel and does not have any of the permissible zoning designations.
4. Billboard signs are prohibited within 500 feet of residential parcels (City Code, Sec 15.5-63f).
5. Billboard signs are prohibited within 1,000 feet of other billboards (City Code, Sec 15.5-63e).

City subsequently provided the applicant the specific denial reasons in a letter dated September 22, 2020 (copy enclosed) as well as advising the applicant of the appeal date/time, October 6, 2002, beginning at 7 pm.

RECOMMENDATION:

Council to deny applicant's sign permit application appeal.



SIGN PERMIT APPLICATION

Form # 200-SP

\$500 APPLICATION
FEE ATTACHED BY
CHECK

This document must be completed in full by the Applicant. Please see Applicant Instructions for complete submittal requirements.

Date of Application 9/9/20

Applicant Name MIKE FITZGERALD (678-571-8889)

Business Name RAILROAD OUTDOOR, LLC

Business Address PO Box 250633, ATLANTA, GA 30325

Business Phone Number 800-977-6889

Alternate Phone Number 678-571-8889

Email Address mike@railroadoutdoor.com

Is this a commercial or residential use? Commercial Residential

Zoning District UNZONED

Contractor Erecting Sign (required) RAILROAD OUTDOOR, LLC

Contractor Address PO Box 250633, ATLANTA, GA 30325

Contractor Business Phone 800-977-6889

Contractor Email Address mike@railroadoutdoor.com

Address where Sign will be Erected SOUTHERLY PORTION OF CSX ROW JUST OUTSIDE 1-285

Description of Sign Position in Relation to Nearest Building NO BUILDINGS ON PROPERTY (SEE ATTACHED SITE PLAN)

FOR OFFICE USE ONLY

Permanent sign application fee is 10% of value of the sign to a maximum of \$500.00

Payment Type: Check # _____ Cash _____ Money Order _____

Amount Paid: \$ _____ Payment Received by _____

Comments: _____

Submittal Instructions (see Applicant Instructions for full requirements):

1. Please make sure sign design conforms to City of Clarkston Code of Ordinances Section 15.5-1 et seq., available online at www.cityofclarkston.com before constructing sign.
2. Do not construct sign prior to issuance of permit.
3. Completed application and plans must be in the City Clerk's office no later than 5:00pm on the first day of the month in order to be on that month's Zoning and Review Committee agenda.
4. If application is incomplete, it will not be considered for approval.
5. Filing fee must be submitted with the application.
6. Applicant may appeal any decision to the City Council.
7. Please include **six (6) copies** of the following items with the application:
 - a. Plans and specifications which **must include**:
 - Site plan of the building and all proposed and existing sign locations, including Included

signs both attached to the building as well as any detached monument type signs. Include dimensions of the building face to which the sign will be attached.

- If the sign will be attached to a shopping center, strip center and/or as part of a complex of connected buildings, it must be uniform in location, size, and color of lettering to the adjacent existing signs. If these conditions apply to your situation, **you must provide photographs of the signs located adjacent to your proposed sign.** If there is a major tenant in the shopping center, include a photograph and dimensions of the major tenant sign. If there is no major tenant, please directly state this.

NO OTHER SIGNS

- b. Sign dimensions and details, **including** a drawing and the following information:

Attached signs:

- Overall size of the building façade
- Size of the sign
- Bolt size (no less than 3/8") and connection types and details
- Color and size of font lettering (no more than 4" on attached signs)
- Materials to be used
- Distance of the sign from the ground
- Amount of projection of the sign from the building

N/A



Detached monument signs: BILLBOARD SIGN

- Foundation details
- Sign colors
- Sign materials
- Distance of the sign from the ground

SEE ATTACHED MECHANICAL DRAWING
BLACK STEEL, CONCRETE, LEAD PANEL
50'

- c. The following additional documents

- Written consent of the owner of the building or land
- Electrical wiring diagrams where applicable
 - Insured electrical contractor information
- Copy of stress sheets
- Dead loads and wind pressure in any direction
- Hold harmless agreement to save City from damages
- Estimated/Actual Cost of Sign (copy of invoice)

ATTACHED LICENSE AGREEMENT

- ✓
- ✓
- ✓
- ✓
- ✓

8. Your application will not be accepted or reviewed until all required submittal items are received.
9. Your application will be reviewed by the Planning and Zoning Commission on _____ (date). The Planning and Zoning Commission meetings are held at City Hall.



SIGN PERMIT APPLICATION

Form # 200-SP

CONDITIONS

By submitting this Application, Applicant agrees to the following conditions which are mandatory for a sign permit in the City:

Insurance Requirement

Applicant must procure, maintain and keep in full force and effect at all times for so long as the sign that is the subject of this application is in place, liability insurance insuring against all third party liability claims and demands for injury to, or death of, persons, or damage to property which arise out of the installation, placement or maintenance of said sign. Such policy of insurance shall insure against any such claim, injury, or loss in an amount not less than \$500,000.00, per occurrence, \$1,000,000.00 General Aggregate for injury (including death) to one or more persons attributable to a single occurrence and for property damage. Such liability insurance may be in the form of general premises liability insurance. A certificate reflecting such insurance coverage shall be provided to the City before the issuance of any sign permit.

Maintenance of Sign

Applicant agrees to maintain said sign in a safe manner, so that it is not a hazard to pedestrian or vehicular traffic, and to conform to all zoning, traffic and safety ordinances of the City of Clarkston with regard to the placing of said sign.

Removal of Sign

The undersigned agrees to remove any sign upon request by the City of Clarkston, in the event it should be deemed by the City Manager to be hazardous to the health, safety and welfare of the public.

SO AGREED:

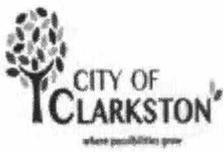
Applicant Signature	Date

Approval Planning & Zoning Committee:

Print Name	Title
Signature	Date

Approval by City Council (When Applicable):

Print Name	Title
Signature	Date



City of Clarkston
1055 Rowland Street
Clarkston, GA 30021

PERMIT APPLICATION

Job Address: CSX ROW E 285
OUTSIDE PERIMETER

PROPERTY OWNER <u>CSX TRANSPORTATION, INC.</u>	PHONE <u>25-357-3908 BOB ORLANDO</u>
MAILING ADDRESS <u>500 WATER ST, JACKSONVILLE FL 32202</u>	<u>RAILROAD AGENT</u>
GENERAL CONTRACTOR/CONTACT PERSON <u>RAILROAD OUTDOOR, LLC</u>	PHONE <u>(678-571-8889)</u>
CONTRACTOR ADDRESS: City, State, and Zip <u>PO BOX 250633, ATLANTA, GA 30325</u>	LICENSE NUMBER <u>SIGN ERECTOR TRADITIONAL EXEMPTION</u>
PLUMBING CONTRACTOR	LICENSE NUMBER
ELECTRICAL CONTRACTOR <u>PARAGON ELECTRIC</u> <u>JOHN BLUE</u>	LICENSE NUMBER <u>EN 211757</u>
MECHANICAL CONTRACTOR	LICENSE NUMBER

DESCRIPTION OF WORK:
SIGN ERECTION BY CAISSON FOOTING (SEE SIGN PLANS)

IMPORTANT- COMPLETE ALL ITEMS AND MARK ALL APPLICABLE BOXES

<p>B. PROPOSED PERMIT TYPE</p> <p>RESIDENTIAL</p> <p><input type="checkbox"/> New Single Family Dwelling</p> <p><input type="checkbox"/> New Accessory Structure</p> <p><input type="checkbox"/> Alteration</p> <p><input type="checkbox"/> Addition</p> <p><input type="checkbox"/> Accessory Structure-Alteration</p> <p><input type="checkbox"/> Pool/Hot Tub</p> <p><input type="checkbox"/> Deck</p> <p>COMMERCIAL</p> <p><input type="checkbox"/> New Commercial</p> <p><input type="checkbox"/> Shell Only</p> <p><input type="checkbox"/> New Multi-Family</p> <p><input type="checkbox"/> Accessory Structure-New</p> <p><input type="checkbox"/> Alteration</p> <p><input type="checkbox"/> Addition</p> <p><input type="checkbox"/> Accessory Structure-Alteration</p> <p><input type="checkbox"/> Pool/Hot Tub</p> <p>MISCELLANEOUS</p> <p><input type="checkbox"/> Electrical Work Only</p> <p><input type="checkbox"/> Plumbing Work Only</p> <p><input type="checkbox"/> Mechanical Work Only</p> <p><input type="checkbox"/> Occupancy</p> <p><input type="checkbox"/> Retaining Wall</p> <p><input type="checkbox"/> Demolition</p> <p><input checked="" type="checkbox"/> Sign-Stand Alone</p> <p><input type="checkbox"/> Sign-Wall</p> <p><input type="checkbox"/> Cell Tower- Electrical</p>	<p>A. SQUARE FOOTAGE</p> <p>Main Floor _____</p> <p>Add. Floors _____</p> <p>Basement _____</p> <p>Covered Porch _____</p> <p>Decks _____</p> <p>Garage _____</p> <p>Other _____</p> <p>D. TOTAL VALUE</p> <p>Building Valuation \$ _____</p> <p>E. CONSTRUCTION TYPE</p> <p><input type="checkbox"/> Wood Frame</p> <p><input type="checkbox"/> Structural Steel</p> <p><input type="checkbox"/> Masonry</p> <p><input type="checkbox"/> Other _____</p>	<p>J. MISCELLANEOUS</p> <p>Number of stories _____</p> <p>Lot Size _____</p> <p>Number of Parking Spaces _____</p> <p>Setbacks:</p> <p>Required: E: _____ W: _____ N: _____ S: _____</p> <p>Shown: E: _____ W: _____ N: _____ S: _____</p> <p>G. TYPE OF SEWERAGE DISPOSAL</p> <p><input type="checkbox"/> Public</p> <p><input type="checkbox"/> Individual (Septic tank)</p> <p>H. TYPE OF WATER SUPPLY</p> <p><input type="checkbox"/> Private</p> <p><input type="checkbox"/> Public</p> <p>I. HEATING FUEL TYPE</p> <p><input type="checkbox"/> Gas LP or NG</p> <p><input type="checkbox"/> Electricity</p> <p><input type="checkbox"/> Solar</p> <p><input type="checkbox"/> Other _____</p>
---	--	---

F. FEES (check box when paid) Permit Fee _____ Plan Review _____ Trade Fee _____ C/O, C/C Fee _____

Site Fee _____ Other _____ Total Fees _____

The applicant, his agents and employees shall comply with all the rules, restrictions and requirements of the City and Building Codes governing location, construction and erection of the above proposed work for which the permit is granted. The City or its agents are authorized to order the immediate cessation of construction at anytime a violation of the codes or regulations appears to have occurred. Violation of any of the codes or regulations applicable may result in the revocation of this permit.

Building MUST conform with plans, as submitted to the City. Any changes of plans or layout must be approved prior to the changes being made. Any change in the use or occupancy of the building or structure must be approved prior to proceeding with construction.

The applicant is required to call for inspections at various stages of the construction, and in accordance with the aforesaid rule, the applicant shall give the building inspector not less than one day's notice to perform such activities.

In the event construction is not commenced within 180 days of issuance of this permit, then the same is automatically void. Cessation of work for a period of 180 continuous days shall also cause this permit to be void. Permits are not transferable.

I hereby certify that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as an authorized agent, and agree to conform to all applicable laws of the State of Georgia. All information submitted on this application is accurate to the best of my knowledge.

SIGNATURE OF APPLICANT <u>Mark B. Jeter</u>	APPLICATION DATE <u>9/9/20</u>
APPROVED P&D MANAGER	DATE

COMMERCIAL – NEW CONSTRUCTION

- Building Permit Application – Completed
- 3 Sets of Structural Drawings – (Sealed when Required)
- Digital Copies of Drawings
- DeKalb County Sewer and Water permits
- DeKalb County Watershed Management Pre- Treatment Permit (If installing grease Trap)
- Drawings must show all MEP'S
- State of Georgia Contractors License
- Current Business License
- Certificate of Occupancy- Fee only required with new Certificate of Occupancy
 - o If new - compete the building permit application

COMMERCIAL – ALTERATIONS

- Building Permit Application – Completed
- 3 Sets of Structural Drawings – (Sealed when Required)
- Digital Copies of Drawings
- DeKalb County Sewer and Water permits
- DeKalb County Watershed Management Pre- Treatment Permit (If installing grease Trap)
- Drawings must show all MEP'S
- State of Georgia Contractors License
- Current Business License

MISCELLANEOUS

- Trade Permit Application
 - o Trade permit application- completed
 - o State of Georgia Trade Contractors License
 - o Current Business License
- Temporary Power Request- Electrical
 - o Required for ALL New Power Request
 - o Temporary Power Release Affidavit
- Retaining Wall
 - o Retaining Wall Permit Application – Completed
 - o 3 Sets Drawings (Engineered if required)
 - o 3 Sets Site Plans, showing proposed wall location – drawn to scale

- Retaining wall indemnification form- Completed
- River corridor Properties require a hold and release Affidavit
- Current business license

○ Demolition Permit

- Demolition application – completed
- Land Disturbance Permit application completed-
 - Refer to land disturbance permit for requirements

○ Land Disturbance Permit

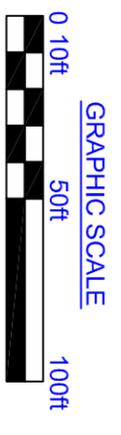
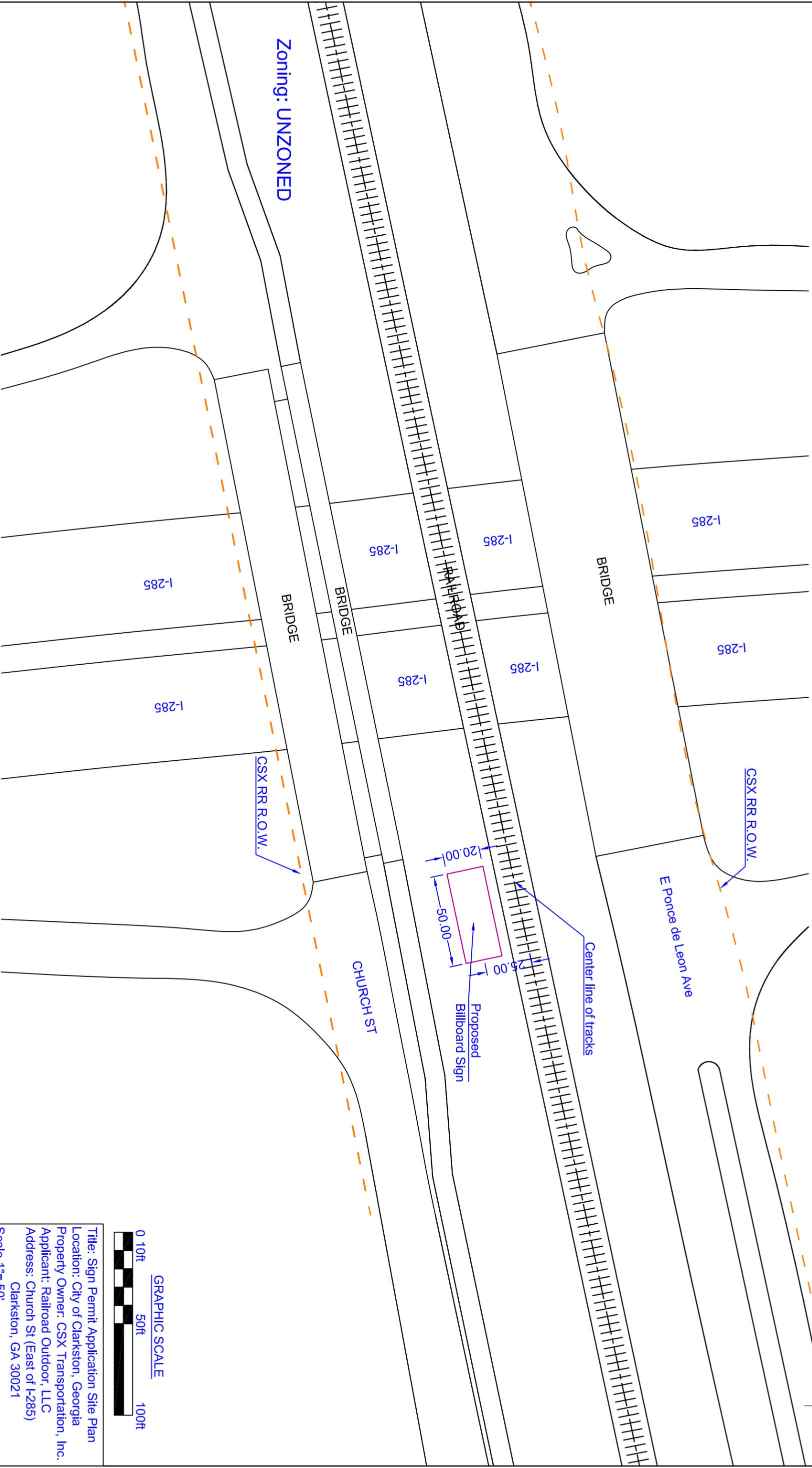
- ✓ ○ See Checklist on Land Disturbance Permit Application
- ✓ Sign – Stand Alone (Monument & Wall Sign)
 - See Sign permit Application

Gas pressure Test – Mechanical/ Plumbing

- See Re- establishing Service Procedure
 - See Fuel Line Inspection Form (completed by staff)

CELL TOWER ELECTRICAL

- 3 Sets of plans and structural analysis
- Business License
When required (State license)



Title: Sign Permit Application Site Plan
Location: City of Clarkston, Georgia
Property Owner: CSX Transportation, Inc.
Applicant: Railroad Outdoor, LLC
Address: Church St (East of I-285)
Clarkston, GA 30021
Scale 1"= 50'

WEBB, KLASE & LEMOND, LLC

ATTORNEYS AT LAW

1900 THE EXCHANGE, S.E. • SUITE 480 • ATLANTA, GEORGIA 30339

(770) 444-9325 • (770) 217-9950 (facsimile)

Author's Direct Dial:
(770) 444-0773

Email Address:
Adam@WebbLLC.com

September 16, 2020

VIA E-MAIL & U.S. MAIL

Shawanna N. Qawiy, MPA, MSCM
Planning & Development Director
City of Clarkston
1055 Rowland Street
Clarkston, GA 30021
sqawiy@cityofclarkston.com

Re: Sign Applications for Railroad Outdoor, LLC

Dear Ms. Qawiy:

I write to you in your capacity as Director of Planning and Development for the City of Clarkston on behalf of my client Railroad Outdoor, LLC ("Railroad"). Pursuant to Section 15.5-26(b)(1) of the Clarkston Code of Ordinances, please accept this letter as Railroad's written notice of appeal from the City's denial of my client's four sign applications. Based on my review of the City's denial (Exh. A hereto) and the Chapter 15.5 Signs of the City's Code of Ordinances, I wanted to outline my client's arguments on appeal. These articulated grounds for appeal are not exhaustive, and Railroad reserves the right to present additional arguments prior to and at the City Council appeal hearing.

All four of my client's sign applications were denied on the grounds that "Pole signs are not permitted in the City of Clarkston." Denial of my client's applications on this basis was incorrect for several reasons. First, as you note in your September 14 email, all four of my client's applications were for billboards, which are specifically governed by Section 15.5-63 of the Clarkston Code of Ordinances. Your attempt to rely upon a general prohibition on pole signs rather than apply the more specific code section that governs billboards is inconsistent with Georgia law, which provides that the terms of a specific statute govern over those of a more general statute. E.g., Denhardt v. Sparks, 844 S.E.2d 192, 195 (Ga. Ct. App. 2020); Vineville Capital Group, LLC v. McCook, 766 S.E.2d 156, 160 (Ga. Ct. App. 2014) ("the terms of a specific statute govern over those of a more general statute"); also Bellsouth Telecommunications, LLC v. Cobb County, 824 S.E.2d 233, 239 (Ga. 2019) ("the more specific statute governs over the more general one"). Had you properly applied the more specific billboard regulation, the basis of denial would not have been applicable.

Section 15.5-63 allows billboards in the City of Clarkston that are 672 square feet in sign area and 50 feet in height, so long as the billboards are on parcels zoned RC, NC-1, NC-2, TC, or I; are located on parcels adjacent to US Highway 78 or Interstate 285 and oriented thereto; and comply with the standards set by Georgia Department of Transportation as to the use of digital technology. See Section 15.5-63(a)-(g). My client's applications meet all of these criteria and should have been approved. Railroad is aware of several billboards that have been erected in Clarkston despite the ordinance's general prohibition on pole signs. It is plainly not applicable to billboards.

My client's applications for billboards on property owned by CSX Railroad should also have been granted. According to the City's Zoning Map (Exh. B hereto), the railroad property within the City of Clarkston has not been zoned. Therefore, Georgia law requires that my client be allowed to install the requested signs. The general rule is that the owner of property has the right to use their property in any lawful manner. E.g., Cherokee County v. Martin, 253 Ga. App. 395, 396 (2002); Picadilly Place Condo. Ass'n v. Frantz, 210 Ga. App. 676, 678 (1993). Because zoning regulations restrict this right, they must be strictly construed in favor of the property owner, and more specifically, the owner's free use of their property. DeKalb County v. Post Apartment Homes, L.P., 234 Ga. App. 409, 410(1) (1998); Martin, 253 Ga. App. at 396; Glynn County v. Palmatary, 247 Ga. 570, 574 (1981); also Fayette County v. Seagraves, 245 Ga. 196, 197-98, 264 S.E.2d 13 (1980). Consequently, land use limitations must (i) be clearly established, (ii) be enforced only as to their plain and explicit terms, and (iii) any ambiguities therein must be resolved in the owner's favor. E.g., Northside Corp. v. City of Atlanta, 278 Ga. 416 (2005); JWIC, Inc. v. City of Sylvester, 278 Ga. 416, 417 (2004); Martin, 253 Ga. App. at 396; Picadilly, 210 Ga. App. at 678; Bo Fancy Productions v. Rabun County Bd. of Comm's, 267 Ga. 341, 343 (1996); Beugnot v. Coweta County, 231 Ga. App. 715, 722 (1998).

Here, the CSX property is unzoned and thus not restricted by any applicable zoning regulations. Although the CSX property has been inside the City limits for decades, the City has chosen not to zone the property. As such, CSX has never had any opportunity to appear before the City Council to show the City what zoning and land use restrictions would be appropriate for the railroad property. Thus, any restrictions being enforced by the City are invalid and void. E.g., Davidson Mineral Properties, Inc. v. Monroe County, 257 Ga. 215, 217 (1987) (holding county could not restrict use of property). Because the City's official zoning map unambiguously shows that the railroad property has not been zoned, the requested billboards must be allowed.

Beyond these errors in misapplying the City's Code of Ordinances and instances of undue discretion, Railroad also believes that the City's guidelines with respect to billboard signs regulate on the basis of content. Why else would your September 14 email request that my client resubmit renderings of the proposed signs with the proposed wording of the sign. In the decision of Reed v. Town of Gilbert, 135 S. Ct. 2218, 2227 (2015), the Supreme Court held that "[g]overnment regulation of speech is content-based if a law applies to particular speech because of the topic discussed or the idea or message expressed." Id. at 2227 (citations omitted). The

Court deemed this rule to be “commonsense” and requires a reviewing court to determine whether a law “‘on its face’ draws distinctions based on the message a speaker conveys.” Id.

The Court then devoted several pages of its opinion to rejecting the rationales of the lower courts for finding that the law was content-neutral. Id. at 2227-31. For instance, the Court found that the government’s motives in adopting the law are irrelevant if the law regulates by content on its face. Id. at 2228 (“Innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech”). The Court also noted that “a speech regulation targeted at specific subject matter is content-based even if it does not discriminate among viewpoints within that subject matter.” Id. at 2230.

The Court then analyzed whether the content-based law could survive strict scrutiny, “which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.” Id. at 2231 (citations omitted). The Court held that the law could not survive strict scrutiny because, even if the town’s interests in traffic safety and aesthetics were considered compelling governmental interests, the code was “hopelessly underinclusive.” Id. (noting that signs bearing certain messages were “no greater an eyesore” than other types of signs, as well as the lack of evidence that signs bearing some messages are more detrimental to traffic safety than signs conveying favored content).

Since Reed, courts have *repeatedly* recognized that distinguishing between signs based on content is unconstitutional. For example, in Thomas v. Schroer, 116 F.3d 869 (W.D. Tenn. 2015), a court relied upon Reed to enjoin the Tennessee Department of Transportation from enforcing state sign laws that subjected off-premise signs to more regulation than on-premise signs. Id. at 875-76. This decision was affirmed by the Sixth Circuit Court of Appeals in Thomas v. Bright, 937 F.3d 721 (6th Cir. 2019), which held that the content-based nature of the sign regulations post-Reed was “neither a close call nor a difficult question.” Id. at 729, 733 (“Tennessee’s Billboard Act contains a non-severable regulation of speech based on the content of the message. Applied to [the plaintiff’s] billboard, it is, therefore, a content-based regulation of non-commercial speech, which subjects it to strict scrutiny”). The State of Kentucky’s sign regulations were just thrown out on the same basis as the Thomas case. See L.D. Mgmt. Co. v. Thomas, 2020 WL 1978387, at *4 (W.D. Ky. Apr. 24, 2020).

Even more recently, the Fifth Circuit Court of Appeals weighed in on this issue. In Reagan National Advertising, Inc. v. City of Austin, __ F.3d __, 2020 WL 5015455 (5th Cir. Aug. 25, 2020), two sign companies filed applications to convert existing off-premise signs (a/k/a billboards) to digital technology. The city denied the applications because its ordinance did not allow off-premise signs to be digitized (even though signs bearing on-premise content could be digitized). The sign companies sued arguing the ordinance was unconstitutional pursuant to Reed but the district court granted judgment in favor of the city. The Fifth Circuit reversed, finding the ordinance content-based and unconstitutional under Reed. The court noted that “to determine whether a sign is on-premises or off-premises, one must read the sign and ask: does it advertise ‘a business, person, activity, goods, products, or services not located on the site

where the sign is installed, or that directs persons to any location not on that site.” Id. at *6. This fact rendered the code content-based and unconstitutional. Id. at *6-11. The City’s admitted intent to review the content on Railroad’s proposed signs as part of the review process is similarly unconstitutional.

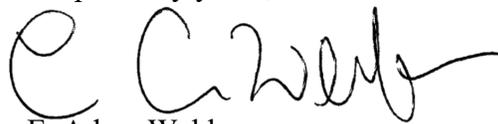
Moreover, the City’s strict regulation of signs in general runs afoul of the Georgia Supreme Court’s requirement that governmental bodies employ the “least restrictive means” when regulating speech activity. E.g., Coffey v. Fayette County, 279 Ga. 111, 111 (2005) (“Coffey I”); Statesboro Publ’g Co. v. City of Sylvania, 271 Ga. 92, 95-96 (1999). Under this standard, cities and counties must carry a heavy burden in order to justify their sign restrictions. Coffey v. Fayette County, 280 Ga. 656, 657-58 (2006). In order to meet this high threshold, the Georgia Supreme Court requires that evidence be presented to support the regulations. Id. This is because Georgia law is the most protective in the nation toward the use of signs for free speech activity. Coffey I, 279 Ga. at 111 (“This Court has interpreted the Georgia Constitution to provide even broader protection than the First Amendment”). Clarkston cannot meet this strict standard as to its Sign Ordinance.

We will also contend that the City’s zoning procedures, Sign Ordinance, zoning code, and/or zoning map have been adopted in an improper manner. Georgia’s Zoning Procedures Law is mandatory and strict compliance is required. We have made requests for the necessary documentation simultaneously herewith and will supplement this appeal upon receipt.

Under Georgia law an application must be granted if the ordinance is invalid for any reason. E.g., Tilley Properties, Inc. v. Bartow County, 261 Ga. 153, 165 (1991) (holding that “[w]here, as in this case, the zoning ordinance is invalid, there is no valid restriction on the property, and the appellant has the right under the law to use the property as it so desires”); Davidson Mineral Props., 257 Ga. at 216-17 (invalidating basis of denial and then mandating that applicant was authorized to proceed with proposed use). As such, Railroad is entitled to the requested permits.

If you have any questions regarding this appeal or need any additional information regarding the same, please do not hesitate to contact me. I look forward to the hearing in front of the City Council.

Respectfully yours,



E. Adam Webb

EAW/ss

Attachments/Enclosures

Exhibit “A”

From: Shawanna Qawiy <sqawiy@cityofclarkston.com>

Sent: Monday, September 14, 2020 4:03 PM

To: kshaw@railroadoutdoor.com

Subject: CSX Sign Permit Requests

Good Day,

The City is in receipt of your request for sign permits.

A review of the four (4) sign permit applications from Railroad Outdoor, LLC shows that all of the proposed signs will be located on poles.

Poles signs are prohibited in the City of Clarkston;

1. 3611 Church Street- Pole Sign (Billboard Sign)
 - a. Pole signs are not permitted in the City of Clarkston.
2. 3874 East Ponce de Leon Avenue (Billboard Sign)
 - a. Pole Signs are not permitted in the City of Clarkston.
3. CSX Outside LED I-285(Billboard)
 - a. Pole Signs are not permitted in the City of Clarkston.
4. CSX Inside LED I-285 (Billboard)
 - a. Pole Signs are not permitted in the City of Clarkston.

Therefore, the submitted applications are DENIED.

You may resubmit the applications for review with the applicable required documents and information. Please include the following for each sign (location/type) request;

1. Completion of the sign permit application (page 2-b) with all related dimension(s) listed.
2. Actual (real) colored renderings of the proposed sign on a site plan (at the actual location) with the proposed lettering/wording.
3. Completed Hold Harmless Form (attached) for each location.
4. Invoice for each sign location.

If you have any questions or concerns, please contact me.

Thank you.

Shawanna N. Qawiy, MPA, MSCM
Planning & Development Director



1055 Rowland St. | Clarkston, GA 30021

(O) 404-296-6489

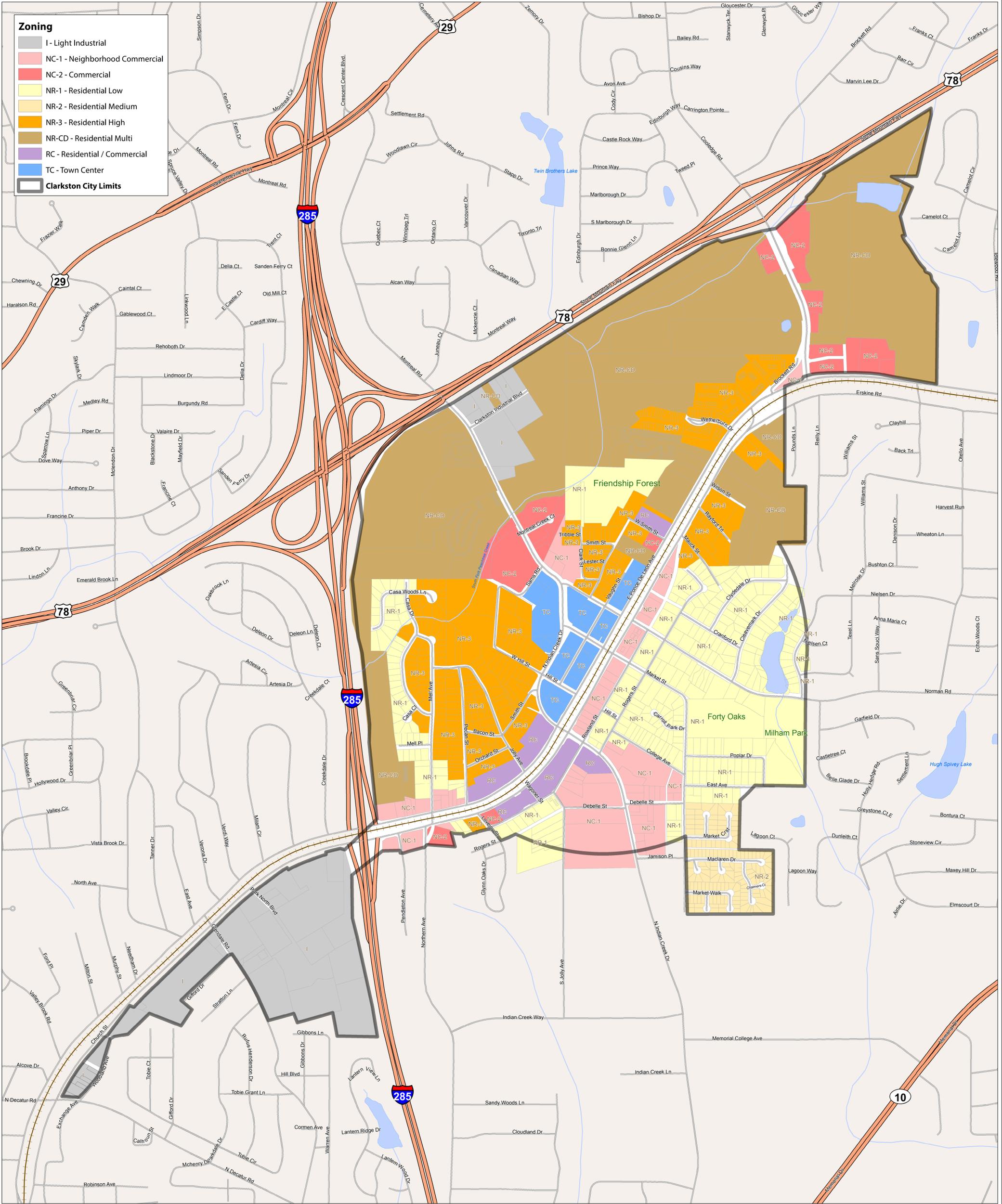
(F) 404-296-6480

SQawiy@cityofclarkston.com

Exhibit “B”

ZONING - CITY OF CLARKSTON, GA

- Zoning**
- I - Light Industrial
 - NC-1 - Neighborhood Commercial
 - NC-2 - Commercial
 - NR-1 - Residential Low
 - NR-2 - Residential Medium
 - NR-3 - Residential High
 - NR-CD - Residential Multi
 - RC - Residential / Commercial
 - TC - Town Center
 - Clarkston City Limits





September 22, 2020

VIA FIRST CLASS MAIL
AND EMAIL: adam@webbllc.com

E. Adam Webb, Esq.
Webb, Klase & Lemond, LLC
1900 The Exchange, SE
Suite 480
Atlanta, GA 30339

RE: Billboard Sign Applications by Railroad Outdoor, LLC

Dear Mr. Webb:

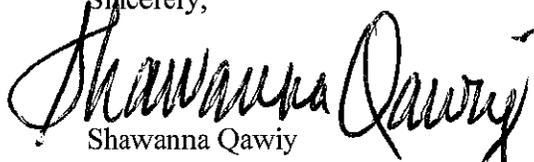
Thank you for your letter dated September 16, 2020. In light of your letter, the City of Clarkston has reevaluated the four sign applications submitted by Railroad Outdoor, LLC. We agree that we prematurely denied the applications based on the prohibition of pole signs.

Per your request, we have reviewed the four applications anew, keeping in mind your suggestion to look for the most specific applicable regulations. In so doing, we found several specific grounds requiring denial of each of the four applications. Please find enclosed documents reflecting the City Manager's official decision with regard to each application.

We will consider your September 16th letter to constitute written appeals of the four revised permit denials enclosed herewith. The Clarkston City Council will hear appeals of the four sign permit denials at its next regular meeting, which will be held on **October 6, 2020 beginning at 7:00 p.m.** City Code Sec. 15.5-26(b).

Due to Covid-19, this meeting will be held via Zoom pursuant to O.C.G.A. § 50-14-1(g). You may find instructions for joining the meeting by Zoom at clarkstonga.gov. If you would like to submit any documents for consideration by the City Council in connection with these appeals, please email them to City Clerk Tracy Ashby at tashby@clarkstonga.gov.

Sincerely,


Shawanna Qawiy
Clarkston Planning & Zoning Director

cc: Kelly Shaw
Mike Fitzgerald
Robin Gomez, City Manager
Tracy Ashby, City Clerk



CITY of CLARKSTON SIGN PERMIT REVIEW

Applicant's Name: Mike Fitzgerald Railroad Outdoor LLC PO Box 250633 Atlanta, GA 30325 Phone No.: 678.571.8889 Email: mike@railroadoutdoor.com	Address: Southerly portion of CSX ROW just outside (east) of I-285 Clarkston, GA 30021 Zoning District: None; railroad right of way
Property Owners Name(s) and Address: CSX Transportation Incorporated a Virginia corporation and Railroad Outdoor, LLC Mailing address: 500 Water Street, Jacksonville, Florida 32202 (CSX Transportation, Inc.)	A lease agreement with CSX was provided
DESCRIPTION OF REQUESTED SIGN(S)	
<u>BILLBOARD SIGN</u> : 14' x 48' CM 20' VEE @50' OAH LED Billboard Sign The applicant is requesting to erect a 14' x 48' CM 20' VEE @50' OAH LED Billboard Sign on the property located at the southerly portion of the just outside of I-285, Church Street (East of I-285).	
A 14' x 48' center mounted unit with 20'VEE and 50' over-all height with a drilled foundation base on 150 psf/ft. (x2) soils. Estimated size: 6' x 23' with approximately 18 yards of concrete.	
CITY MANAGER'S DECISION: DENIAL	

Reasons for decision:

- Signs are prohibited within public rights of way and utility easements. City Code Sec. 15.5-41(3)
- Signs are prohibited within the railroad right of way. City Code Sec. 15.5-41(4)
- Billboard signs are only permitted on parcels zoned RC, NC-1, NC-2, TC or I. City Code Sec. 15.5-63(b). The CSX Railroad right of way is not a parcel and does not have any of the permissible zoning designations.
- Billboard signs are prohibited within 500 feet of residential parcels. City Code Sec. 15.5-63(f). The proposed location is within 500 feet of residential property including, but not limited to, the Highland Village Apartments north/northeast of the proposed location, various residences on Creekdale Drive west/northwest of the proposed location and on Pendleton Road south of the proposed location
- Billboard signs are prohibited within 1000 feet of other billboards. City Code Sec. 15.5-63(e). The other three billboard signs proposed by Railroad Outdoor are within 1000 feet of this location.

Robin Gomez

Date: 9.22.2020

Robin Gomez, Clarkston City Manager

CITY OF CLARKSTON

CLARKSTON CITY COUNCIL MEETING

BUSINESS AGENDA / MINUTES

MEETING DATE: September 29, 2020

ITEM NO: E12

ACTION TYPE:
BUSINESS APPEAL

HEARING TYPE:
Work Session

SUBJECT: Appeal of City Denial of Sign Permit Application from Railroad Outdoor LLC, to Erect a 14' x 48' FF 20' VEE @ 50' OAH Billboard Sign on the Property Located at the southerly portion of Church St, just inside (West) of I-285.

DEPARTMENT: City Administration

PUBLIC HEARING: YES NO

ATTACHMENT: YES NO
Pages: 17

INFORMATION CONTACT: ROBIN I. GOMEZ,
PHONE NUMBER: 404-296-6489

PURPOSE: City Council to discuss/review appeal by Railroad Outdoor LLC of City of Clarkston City Manager's denial of a sign permit application from Railroad Outdoor LLC to erect a 14' x 48' FF 20' VEE @ 50' OAH billboard sign on the property located at the southerly portion of Church St, just inside of (West) of I-285.

BACKGROUND/IMPACT:

City received referenced sign permit application (copy enclosed) on September 10, 2020, and subsequently submitted a denial on September 14, 2020 (copy enclosed), based on the City's prohibition of pole signs. Applicant submitted a reply letter on September 16, 2020 (copy enclosed), appealing the City's decision, suggesting that the City look for the most specific applicable regulations for the denial. Our review found several specific City code references requiring denial of the application, specifically:

1. Signs are prohibited within public rights of ways and utility easements (City Code, Sec 15.5-41,3).
2. Signs are prohibited within the railroad right of way (City Code, Sec 15.5-41, 4).
3. Billboard signs are only permitted on parcels zoned RC, NC-1, NC-2, TC, or I (City Code, Sec 15.5-63,b). The CSX RR right-of-way is not a parcel and does not have any of the permissible zoning designations.
4. Billboard signs are prohibited within 500 feet of residential parcels (City Code, Sec 15.5-63f).
5. Billboard signs are prohibited within 1,000 feet of other billboards (City Code, Sec 15.5-63e).

City subsequently provided the applicant the specific denial reasons in a letter dated September 22, 2020 (copy enclosed) as well as advising the applicant of the appeal date/time, October 6, 2002, beginning at 7 pm.

RECOMMENDATION:

Council to deny applicant's sign permit application appeal.



SIGN PERMIT APPLICATION

ORIGINAL

Form # 200-SP

\$500 APPLICATION
FEE ATTACHED BY
CHECK

This document must be completed in full by the Applicant. Please see Applicant Instructions for complete submittal requirements.

Date of Application 9/9/20

Applicant Name MIKE FITZGERALD (678-571-8889)

Business Name RAILROAD OUTDOOR, LLC

Business Address PO Box 210633, ATLANTA, GA 30325

Business Phone Number 800-977-6889

Alternate Phone Number 678-571-8889

Email Address mike@railroadoutdoor.com

Is this a commercial or residential use? Commercial Residential

Zoning District UNZONED

Contractor Erecting Sign (required) RAILROAD OUTDOOR, LLC

Contractor Address PO Box 210633, ATLANTA, GA 30325

Contractor Business Phone 800-977-6889

Contractor Email Address mike@railroadoutdoor.com

Address where Sign will be Erected SOUTHERLY PORTION OF CSX ROW JUST INSIDE I-285

Description of Sign Position in Relation to Nearest Building NO BUILDINGS ON PROPERTY (SEE ATTACHED SITE PLAN)

FOR OFFICE USE ONLY

Permanent sign application fee is 10% of value of the sign to a maximum of \$500.00

Payment Type: Check # _____ Cash _____ Money Order _____

Amount Paid: \$ _____ Payment Received by _____

Comments:

Submittal Instructions (see Applicant Instructions for full requirements):

- Please make sure sign design conforms to City of Clarkston Code of Ordinances Section 15.5-1 et seq., available online at www.cityofclarkston.com before constructing sign.
- Do not construct sign prior to issuance of permit.
- Completed application and plans must be in the City Clerk's office no later than 5:00pm on the first day of the month in order to be on that month's Zoning and Review Committee agenda.
- If application is incomplete, it will not be considered for approval.
- Filing fee must be submitted with the application.
- Applicant may appeal any decision to the City Council.
- Please include **six (6) copies** of the following items with the application:
 - Plans and specifications which **must include**:
 - Site plan of the building and all proposed and existing sign locations, including Included

signs both attached to the building as well as any detached monument type signs. Include dimensions of the building face to which the sign will be attached.

- If the sign will be attached to a shopping center, strip center and/or as part of a complex of connected buildings, it must be uniform in location, size, and color of lettering to the adjacent existing signs. If these conditions apply to your situation, **you must provide photographs of the signs located adjacent to your proposed sign.** If there is a major tenant in the shopping center, include a photograph and dimensions of the major tenant sign. If there is no major tenant, please directly state this.
- b. Sign dimensions and details, **including** a drawing and the following information:
- Attached signs:*
- Overall size of the building façade
 - Size of the sign
 - Bolt size (no less than 3/8") and connection types and details
 - Color and size of font lettering (no more than 4" on attached signs)
 - Materials to be used
 - Distance of the sign from the ground
 - Amount of projection of the sign from the building
- Detached monument signs:*
- Foundation details
 - Sign colors
 - Sign materials
 - Distance of the sign from the ground
- c. The following additional documents
- Written consent of the owner of the building or land
 - Electrical wiring diagrams where applicable
 - Insured electrical contractor information
 - Copy of stress sheets
 - Dead loads and wind pressure in any direction
 - Hold harmless agreement to save City from damages
 - Estimated/Actual Cost of Sign (copy of invoice)

NO OTHER SIGNS

N/A

N/A

*SEE ATTACHED MECHANICAL
BLACK DRAWING
STEEL + LED PANELS
50'*

LICENSE AGREEMENT ATTACHED

- 8. Your application will not be accepted or reviewed until all required submittal items are received.
- 9. Your application will be reviewed by the Planning and Zoning Commission on _____ (date). The Planning and Zoning Commission meetings are held at City Hall.



SIGN PERMIT APPLICATION

Form # 200-SP

CONDITIONS

By submitting this Application, Applicant agrees to the following conditions which are mandatory for a sign permit in the City:

Insurance Requirement

Applicant must procure, maintain and keep in full force and effect at all times for so long as the sign that is the subject of this application is in place, liability insurance insuring against all third party liability claims and demands for injury to, or death of, persons, or damage to property which arise out of the installation, placement or maintenance of said sign. Such policy of insurance shall insure against any such claim, injury, or loss in an amount not less than \$500,000.00, per occurrence, \$1,000,000.00 General Aggregate for injury (including death) to one or more persons attributable to a single occurrence and for property damage. Such liability insurance may be in the form of general premises liability insurance. A certificate reflecting such insurance coverage shall be provided to the City before the issuance of any sign permit.

Maintenance of Sign

Applicant agrees to maintain said sign in a safe manner, so that it is not a hazard to pedestrian or vehicular traffic, and to conform to all zoning, traffic and safety ordinances of the City of Clarkston with regard to the placing of said sign.

Removal of Sign

The undersigned agrees to remove any sign upon request by the City of Clarkston, in the event it should be deemed by the City Manager to be hazardous to the health, safety and welfare of the public.

SO AGREED:


 Applicant Signature _____ Date 9/9/20

Approval Planning & Zoning Committee:

 Print Name Title

 Signature Date

Approval by City Council (When Applicable):

 Print Name Title

 Signature Date



City of Clarkston 1055 Rowland Street Clarkston, GA 30021	PERMIT APPLICATION Job Address: <u>CSX ROW C 1-285</u> <u>INSIDE PERIMETER</u>
---	---

PROPERTY OWNER <u>CSX TRANSPORTATION, INC.</u>	PHONE <u>215-357-3908</u> <u>BOB ORLANDO</u>
MAILING ADDRESS <u>500 WATER ST, JACKSONVILLE, FL 32202</u> <u>RAILROAD AGENT</u>	
GENERAL CONTRACTOR/CONTACT PERSON <u>RAILROAD OUTDOOR, LLC</u> <u>MIKE FITZGERALD</u>	PHONE <u>678-571-8889</u>
CONTRACTOR ADDRESS: City, State, and Zip <u>PO BOX 250633, ATLANTA, GA 30325</u>	LICENSE NUMBER <u>SIGN ERECTOR TRADITIONAL EXEMPTION</u>
PLUMBING CONTRACTOR	LICENSE NUMBER
ELECTRICAL CONTRACTOR <u>PARAGON ELECTRIC</u> <u>JOHN BLUE</u>	LICENSE NUMBER <u>EN 211957</u>
MECHANICAL CONTRACTOR	LICENSE NUMBER

DESCRIPTION OF WORK: SIGN ERECTION BY CHASSIS FOOTING (SEE SIGN PLANS)

IMPORTANT- COMPLETE ALL ITEMS AND MARK ALL APPLICABLE BOXES

B. PROPOSED PERMIT TYPE <u>RESIDENTIAL</u> <input type="checkbox"/> New Single Family Dwelling <input type="checkbox"/> New Accessory Structure <input type="checkbox"/> Alteration <input type="checkbox"/> Addition <input type="checkbox"/> Accessory Structure-Alteration <input type="checkbox"/> Pool/Hot Tub <input type="checkbox"/> Deck <u>COMMERCIAL</u> <input type="checkbox"/> New Commercial <input type="checkbox"/> Shell Only <input type="checkbox"/> New Multi-Family <input type="checkbox"/> Accessory Structure-New <input type="checkbox"/> Alteration <input type="checkbox"/> Addition <input type="checkbox"/> Accessory Structure-Alteration <input type="checkbox"/> Pool/Hot Tub <u>MISCELLANEOUS</u> <input type="checkbox"/> Electrical Work Only <input type="checkbox"/> Plumbing Work Only <input type="checkbox"/> Mechanical Work Only <input type="checkbox"/> Occupancy <input type="checkbox"/> Retaining Wall <input type="checkbox"/> Demolition <input checked="" type="checkbox"/> Sign-Stand Alone <input type="checkbox"/> Sign-Wall <input type="checkbox"/> Cell Tower- Electrical	A. SQUARE FOOTAGE Main Floor _____ Add. Floors _____ Basement _____ Covered Porch _____ Decks _____ Garage _____ Other _____ D. TOTAL VALUE Building Valuation \$ _____ E. CONSTRUCTION TYPE <input type="checkbox"/> Wood Frame <input type="checkbox"/> Structural Steel <input type="checkbox"/> Masonry <input type="checkbox"/> Other _____	J. MISCELLANEOUS Number of stories _____ Lot Size _____ Number of Parking Spaces _____ Setbacks: Required: E: _____ W: _____ N: _____ S: _____ Shown: E: _____ W: _____ N: _____ S: _____ G. TYPE OF SEWERAGE DISPOSAL <input type="checkbox"/> Public <input type="checkbox"/> Individual (Septic tank) H. TYPE OF WATER SUPPLY <input type="checkbox"/> Private <input type="checkbox"/> Public I. HEATING FUEL TYPE <input type="checkbox"/> Gas LP or NG <input type="checkbox"/> Electricity <input type="checkbox"/> Solar <input type="checkbox"/> Other _____
--	---	--

F. FEES (check box when paid) Permit Fee _____ Plan Review _____ Trade Fee _____ C/O, C/C Fee _____
 Site Fee _____ Other _____ Total Fees _____

The applicant, his agents and employees shall comply with all the rules, restrictions and requirements of the City and Building Codes governing location, construction and erection of the above proposed work for which the permit is granted. The City or its agents are authorized to order the immediate cessation of construction at anytime a violation of the codes or regulations appears to have occurred. Violation of any of the codes or regulations applicable may result in the revocation of this permit.

Building MUST conform with plans, as submitted to the City. Any changes of plans or layout must be approved prior to the changes being made. Any change in the use or occupancy of the building or structure must be approved prior to proceeding with construction.

The applicant is required to call for inspections at various stages of the construction, and in accordance with the aforesaid rule, the applicant shall give the building inspector not less than one day's notice to perform such activities.

In the event construction is not commenced within 180 days of issuance of this permit, then the same is automatically void. Cessation of work for a period of 180 continuous days shall also cause this permit to be void. Permits are not transferable.

I hereby certify that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as an authorized agent, and agree to conform to all applicable laws of the State of Georgia. All information submitted on this application is accurate to the best of my knowledge.

SIGNATURE OF APPLICANT <u>[Signature]</u>	APPLICATION DATE <u>9/9/20</u>
APPROVED P&D MANAGER	DATE

COMMERICAL – NEW CONSTRUCTION

- Building Permit Application – Completed
- 3 Sets of Structural Drawings – (Sealed when Required)
- Digital Copies of Drawings
- DeKalb County Sewer and Water permits
- DeKalb County Watershed Management Pre- Treatment Permit (If installing grease Trap)
- Drawings must show all MEP'S
- State of Georgia Contractors License
- Current Business License
- Certificate of Occupancy- Fee only required with new Certificate of Occupancy
 - o If new - compete the building permit application

COMMERCIAL – ALTERATIONS

- Building Permit Application – Completed
- 3 Sets of Structural Drawings – (Sealed when Required)
- Digital Copies of Drawings
- DeKalb County Sewer and Water permits
- DeKalb County Watershed Management Pre- Treatment Permit (If installing grease Trap)
- Drawings must show all MEP'S
- State of Georgia Contractors License
- Current Business License

MISCELLANEOUS

- Trade Permit Application
 - o Trade permit application- completed
 - o State of Georgia Trade Contractors License
 - o Current Business License
- Temporary Power Request- Electrical
 - o Required for ALL New Power Request
 - o Temporary Power Release Affidavit
- Retaining Wall
 - o Retaining Wall Permit Application – Completed
 - o 3 Sets Drawings (Engineered if required)
 - o 3 Sets Site Plans, showing proposed wall location – drawn to scale

- Retaining wall indemnification form- Completed
- River corridor Properties require a hold and release Affidavit
- Current business license

Demolition Permit

- Demolition application – completed
- Land Disturbance Permit application completed-
 - Refer to land disturbance permit for requirements

Land Disturbance Permit

- ✓ ○ See Checklist on Land Disturbance Permit Application

Sign – Stand Alone (Monument & Wall Sign)

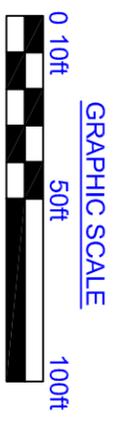
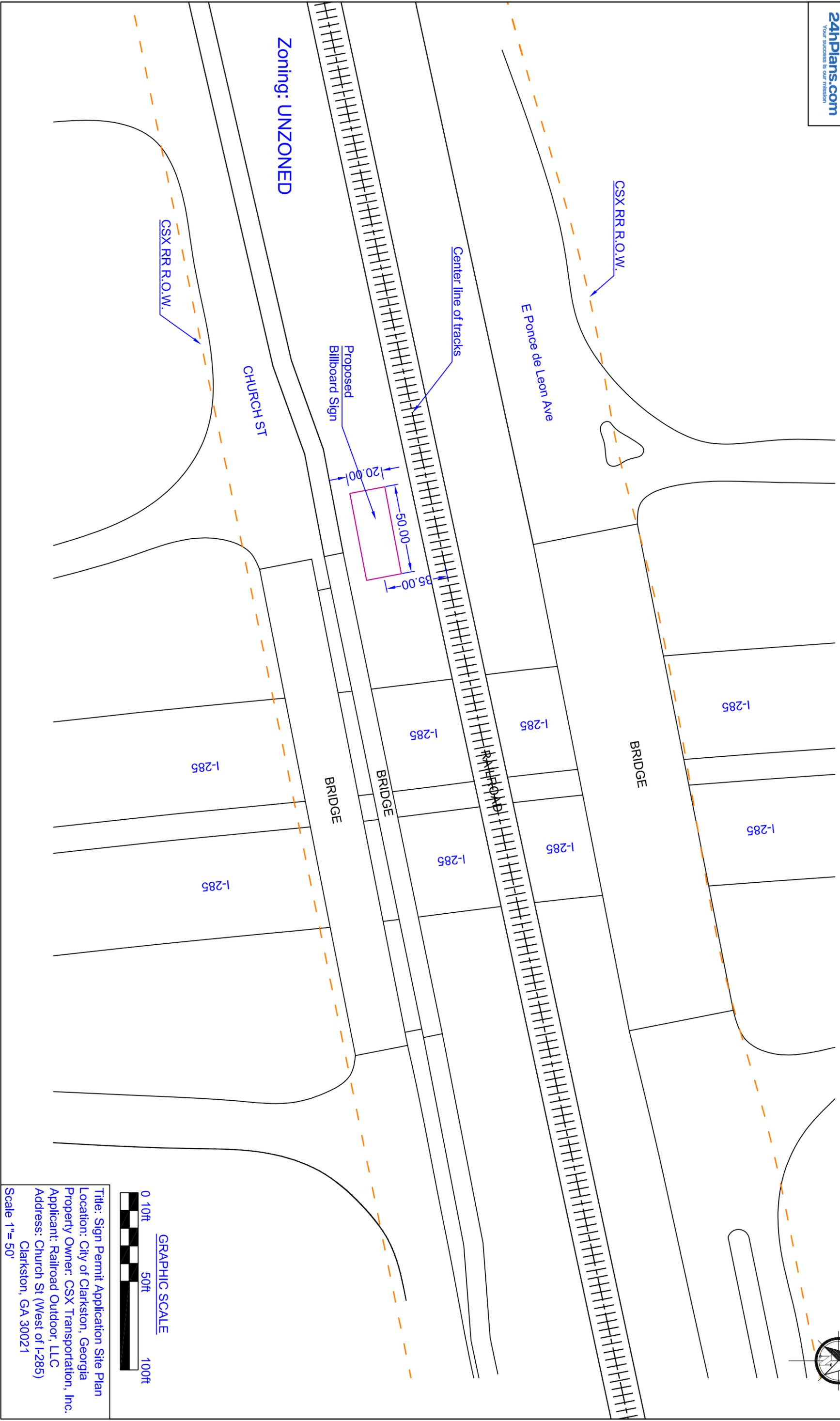
- See Sign permit Application

Gas pressure Test – Mechanical/ Plumbing

- See Re- establishing Service Procedure
 - See Fuel Line Inspection Form (completed by staff)

CELL TOWER ELECTRICAL

- 3 Sets of plans and structural analysis
- Business License
- When required (State license)



Title: Sign Permit Application Site Plan
Location: City of Clarkston, Georgia
Property Owner: CSX Transportation, Inc.
Applicant: Railroad Outdoor, LLC
Address: Church St (West of I-285)
Clarkston, GA 30021
Scale 1"= 50'

WEBB, KLASE & LEMOND, LLC

ATTORNEYS AT LAW

1900 THE EXCHANGE, S.E. • SUITE 480 • ATLANTA, GEORGIA 30339

(770) 444-9325 • (770) 217-9950 (facsimile)

Author's Direct Dial:
(770) 444-0773

Email Address:
Adam@WebbLLC.com

September 16, 2020

VIA E-MAIL & U.S. MAIL

Shawanna N. Qawiy, MPA, MSCM
Planning & Development Director
City of Clarkston
1055 Rowland Street
Clarkston, GA 30021
sqawiy@cityofclarkston.com

Re: Sign Applications for Railroad Outdoor, LLC

Dear Ms. Qawiy:

I write to you in your capacity as Director of Planning and Development for the City of Clarkston on behalf of my client Railroad Outdoor, LLC ("Railroad"). Pursuant to Section 15.5-26(b)(1) of the Clarkston Code of Ordinances, please accept this letter as Railroad's written notice of appeal from the City's denial of my client's four sign applications. Based on my review of the City's denial (Exh. A hereto) and the Chapter 15.5 Signs of the City's Code of Ordinances, I wanted to outline my client's arguments on appeal. These articulated grounds for appeal are not exhaustive, and Railroad reserves the right to present additional arguments prior to and at the City Council appeal hearing.

All four of my client's sign applications were denied on the grounds that "Pole signs are not permitted in the City of Clarkston." Denial of my client's applications on this basis was incorrect for several reasons. First, as you note in your September 14 email, all four of my client's applications were for billboards, which are specifically governed by Section 15.5-63 of the Clarkston Code of Ordinances. Your attempt to rely upon a general prohibition on pole signs rather than apply the more specific code section that governs billboards is inconsistent with Georgia law, which provides that the terms of a specific statute govern over those of a more general statute. E.g., Denhardt v. Sparks, 844 S.E.2d 192, 195 (Ga. Ct. App. 2020); Vineville Capital Group, LLC v. McCook, 766 S.E.2d 156, 160 (Ga. Ct. App. 2014) ("the terms of a specific statute govern over those of a more general statute"); also Bellsouth Telecommunications, LLC v. Cobb County, 824 S.E.2d 233, 239 (Ga. 2019) ("the more specific statute governs over the more general one"). Had you properly applied the more specific billboard regulation, the basis of denial would not have been applicable.

Section 15.5-63 allows billboards in the City of Clarkston that are 672 square feet in sign area and 50 feet in height, so long as the billboards are on parcels zoned RC, NC-1, NC-2, TC, or I; are located on parcels adjacent to US Highway 78 or Interstate 285 and oriented thereto; and comply with the standards set by Georgia Department of Transportation as to the use of digital technology. See Section 15.5-63(a)-(g). My client's applications meet all of these criteria and should have been approved. Railroad is aware of several billboards that have been erected in Clarkston despite the ordinance's general prohibition on pole signs. It is plainly not applicable to billboards.

My client's applications for billboards on property owned by CSX Railroad should also have been granted. According to the City's Zoning Map (Exh. B hereto), the railroad property within the City of Clarkston has not been zoned. Therefore, Georgia law requires that my client be allowed to install the requested signs. The general rule is that the owner of property has the right to use their property in any lawful manner. E.g., Cherokee County v. Martin, 253 Ga. App. 395, 396 (2002); Picadilly Place Condo. Ass'n v. Frantz, 210 Ga. App. 676, 678 (1993). Because zoning regulations restrict this right, they must be strictly construed in favor of the property owner, and more specifically, the owner's free use of their property. DeKalb County v. Post Apartment Homes, L.P., 234 Ga. App. 409, 410(1) (1998); Martin, 253 Ga. App. at 396; Glynn County v. Palmatary, 247 Ga. 570, 574 (1981); also Fayette County v. Seagraves, 245 Ga. 196, 197-98, 264 S.E.2d 13 (1980). Consequently, land use limitations must (i) be clearly established, (ii) be enforced only as to their plain and explicit terms, and (iii) any ambiguities therein must be resolved in the owner's favor. E.g., Northside Corp. v. City of Atlanta, 278 Ga. 416 (2005); JWIC, Inc. v. City of Sylvester, 278 Ga. 416, 417 (2004); Martin, 253 Ga. App. at 396; Picadilly, 210 Ga. App. at 678; Bo Fancy Productions v. Rabun County Bd. of Comm's, 267 Ga. 341, 343 (1996); Beugnot v. Coweta County, 231 Ga. App. 715, 722 (1998).

Here, the CSX property is unzoned and thus not restricted by any applicable zoning regulations. Although the CSX property has been inside the City limits for decades, the City has chosen not to zone the property. As such, CSX has never had any opportunity to appear before the City Council to show the City what zoning and land use restrictions would be appropriate for the railroad property. Thus, any restrictions being enforced by the City are invalid and void. E.g., Davidson Mineral Properties, Inc. v. Monroe County, 257 Ga. 215, 217 (1987) (holding county could not restrict use of property). Because the City's official zoning map unambiguously shows that the railroad property has not been zoned, the requested billboards must be allowed.

Beyond these errors in misapplying the City's Code of Ordinances and instances of undue discretion, Railroad also believes that the City's guidelines with respect to billboard signs regulate on the basis of content. Why else would your September 14 email request that my client resubmit renderings of the proposed signs with the proposed wording of the sign. In the decision of Reed v. Town of Gilbert, 135 S. Ct. 2218, 2227 (2015), the Supreme Court held that "[g]overnment regulation of speech is content-based if a law applies to particular speech because of the topic discussed or the idea or message expressed." Id. at 2227 (citations omitted). The

Court deemed this rule to be “commonsense” and requires a reviewing court to determine whether a law “‘on its face’ draws distinctions based on the message a speaker conveys.” Id.

The Court then devoted several pages of its opinion to rejecting the rationales of the lower courts for finding that the law was content-neutral. Id. at 2227-31. For instance, the Court found that the government’s motives in adopting the law are irrelevant if the law regulates by content on its face. Id. at 2228 (“Innocent motives do not eliminate the danger of censorship presented by a facially content-based statute, as future government officials may one day wield such statutes to suppress disfavored speech”). The Court also noted that “a speech regulation targeted at specific subject matter is content-based even if it does not discriminate among viewpoints within that subject matter.” Id. at 2230.

The Court then analyzed whether the content-based law could survive strict scrutiny, “which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.” Id. at 2231 (citations omitted). The Court held that the law could not survive strict scrutiny because, even if the town’s interests in traffic safety and aesthetics were considered compelling governmental interests, the code was “hopelessly underinclusive.” Id. (noting that signs bearing certain messages were “no greater an eyesore” than other types of signs, as well as the lack of evidence that signs bearing some messages are more detrimental to traffic safety than signs conveying favored content).

Since Reed, courts have *repeatedly* recognized that distinguishing between signs based on content is unconstitutional. For example, in Thomas v. Schroer, 116 F.3d 869 (W.D. Tenn. 2015), a court relied upon Reed to enjoin the Tennessee Department of Transportation from enforcing state sign laws that subjected off-premise signs to more regulation than on-premise signs. Id. at 875-76. This decision was affirmed by the Sixth Circuit Court of Appeals in Thomas v. Bright, 937 F.3d 721 (6th Cir. 2019), which held that the content-based nature of the sign regulations post-Reed was “neither a close call nor a difficult question.” Id. at 729, 733 (“Tennessee’s Billboard Act contains a non-severable regulation of speech based on the content of the message. Applied to [the plaintiff’s] billboard, it is, therefore, a content-based regulation of non-commercial speech, which subjects it to strict scrutiny”). The State of Kentucky’s sign regulations were just thrown out on the same basis as the Thomas case. See L.D. Mgmt. Co. v. Thomas, 2020 WL 1978387, at *4 (W.D. Ky. Apr. 24, 2020).

Even more recently, the Fifth Circuit Court of Appeals weighed in on this issue. In Reagan National Advertising, Inc. v. City of Austin, __ F.3d __, 2020 WL 5015455 (5th Cir. Aug. 25, 2020), two sign companies filed applications to convert existing off-premise signs (a/k/a billboards) to digital technology. The city denied the applications because its ordinance did not allow off-premise signs to be digitized (even though signs bearing on-premise content could be digitized). The sign companies sued arguing the ordinance was unconstitutional pursuant to Reed but the district court granted judgment in favor of the city. The Fifth Circuit reversed, finding the ordinance content-based and unconstitutional under Reed. The court noted that “to determine whether a sign is on-premises or off-premises, one must read the sign and ask: does it advertise ‘a business, person, activity, goods, products, or services not located on the site

where the sign is installed, or that directs persons to any location not on that site.” Id. at *6. This fact rendered the code content-based and unconstitutional. Id. at *6-11. The City’s admitted intent to review the content on Railroad’s proposed signs as part of the review process is similarly unconstitutional.

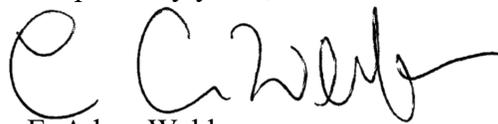
Moreover, the City’s strict regulation of signs in general runs afoul of the Georgia Supreme Court’s requirement that governmental bodies employ the “least restrictive means” when regulating speech activity. E.g., Coffey v. Fayette County, 279 Ga. 111, 111 (2005) (“Coffey I”); Statesboro Publ’g Co. v. City of Sylvania, 271 Ga. 92, 95-96 (1999). Under this standard, cities and counties must carry a heavy burden in order to justify their sign restrictions. Coffey v. Fayette County, 280 Ga. 656, 657-58 (2006). In order to meet this high threshold, the Georgia Supreme Court requires that evidence be presented to support the regulations. Id. This is because Georgia law is the most protective in the nation toward the use of signs for free speech activity. Coffey I, 279 Ga. at 111 (“This Court has interpreted the Georgia Constitution to provide even broader protection than the First Amendment”). Clarkston cannot meet this strict standard as to its Sign Ordinance.

We will also contend that the City’s zoning procedures, Sign Ordinance, zoning code, and/or zoning map have been adopted in an improper manner. Georgia’s Zoning Procedures Law is mandatory and strict compliance is required. We have made requests for the necessary documentation simultaneously herewith and will supplement this appeal upon receipt.

Under Georgia law an application must be granted if the ordinance is invalid for any reason. E.g., Tilley Properties, Inc. v. Bartow County, 261 Ga. 153, 165 (1991) (holding that “[w]here, as in this case, the zoning ordinance is invalid, there is no valid restriction on the property, and the appellant has the right under the law to use the property as it so desires”); Davidson Mineral Props., 257 Ga. at 216-17 (invalidating basis of denial and then mandating that applicant was authorized to proceed with proposed use). As such, Railroad is entitled to the requested permits.

If you have any questions regarding this appeal or need any additional information regarding the same, please do not hesitate to contact me. I look forward to the hearing in front of the City Council.

Respectfully yours,



E. Adam Webb

EAW/ss

Attachments/Enclosures

Exhibit “A”

From: Shawanna Qawiy <sqawiy@cityofclarkston.com>

Sent: Monday, September 14, 2020 4:03 PM

To: kshaw@railroadoutdoor.com

Subject: CSX Sign Permit Requests

Good Day,

The City is in receipt of your request for sign permits.

A review of the four (4) sign permit applications from Railroad Outdoor, LLC shows that all of the proposed signs will be located on poles.

Poles signs are prohibited in the City of Clarkston;

1. 3611 Church Street- Pole Sign (Billboard Sign)
 - a. Pole signs are not permitted in the City of Clarkston.
2. 3874 East Ponce de Leon Avenue (Billboard Sign)
 - a. Pole Signs are not permitted in the City of Clarkston.
3. CSX Outside LED I-285(Billboard)
 - a. Pole Signs are not permitted in the City of Clarkston.
4. CSX Inside LED I-285 (Billboard)
 - a. Pole Signs are not permitted in the City of Clarkston.

Therefore, the submitted applications are DENIED.

You may resubmit the applications for review with the applicable required documents and information. Please include the following for each sign (location/type) request;

1. Completion of the sign permit application (page 2-b) with all related dimension(s) listed.
2. Actual (real) colored renderings of the proposed sign on a site plan (at the actual location) with the proposed lettering/wording.
3. Completed Hold Harmless Form (attached) for each location.
4. Invoice for each sign location.

If you have any questions or concerns, please contact me.

Thank you.

Shawanna N. Qawiy, MPA, MSCM
Planning & Development Director



1055 Rowland St. | Clarkston, GA 30021

(O) 404-296-6489

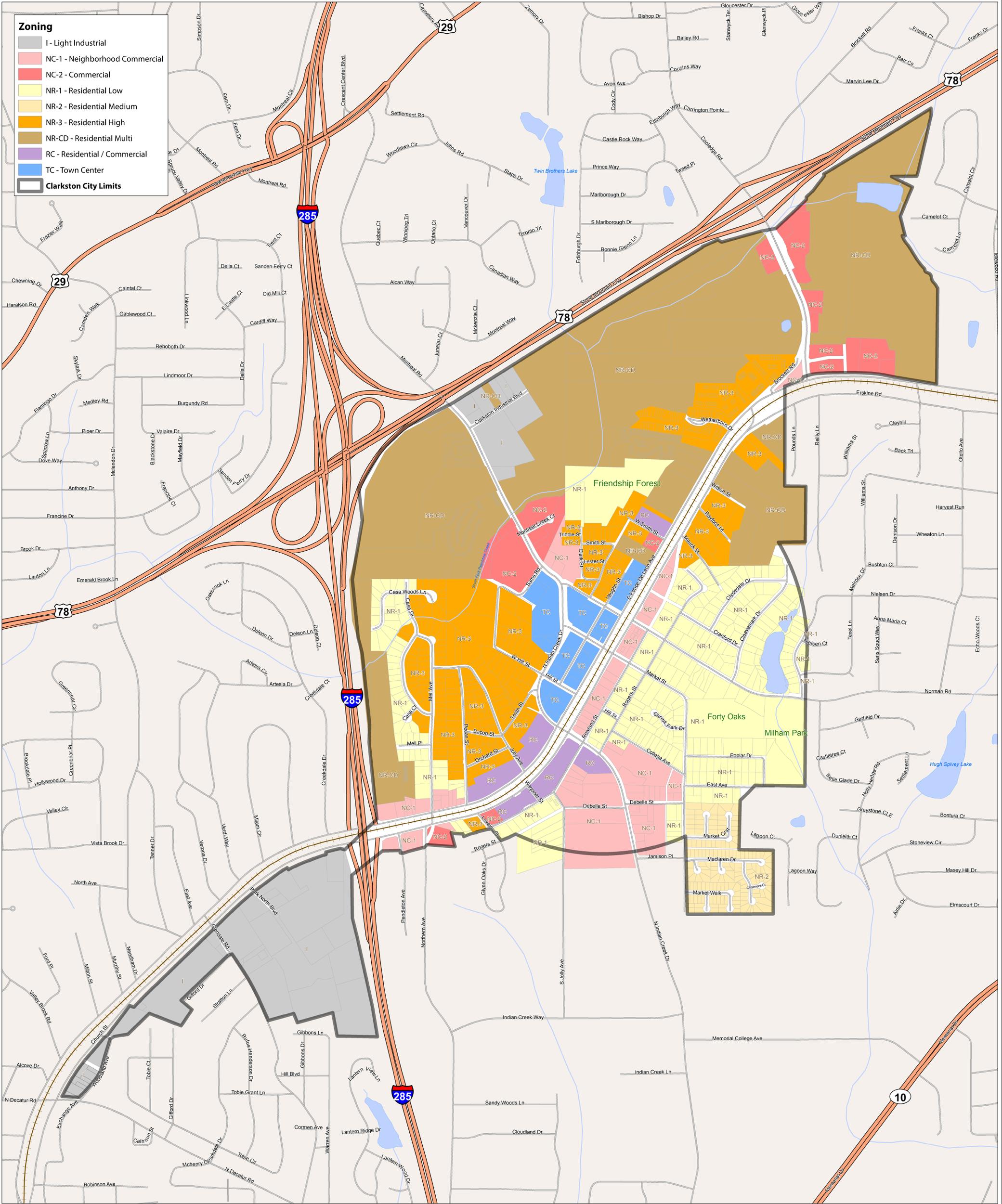
(F) 404-296-6480

SQawiy@cityofclarkston.com

Exhibit “B”

ZONING - CITY OF CLARKSTON, GA

- Zoning**
- I - Light Industrial
 - NC-1 - Neighborhood Commercial
 - NC-2 - Commercial
 - NR-1 - Residential Low
 - NR-2 - Residential Medium
 - NR-3 - Residential High
 - NR-CD - Residential Multi
 - RC - Residential / Commercial
 - TC - Town Center
 - Clarkston City Limits





September 22, 2020

VIA FIRST CLASS MAIL
AND EMAIL: adam@webbllc.com

E. Adam Webb, Esq.
Webb, Klase & Lemond, LLC
1900 The Exchange, SE
Suite 480
Atlanta, GA 30339

RE: Billboard Sign Applications by Railroad Outdoor, LLC

Dear Mr. Webb:

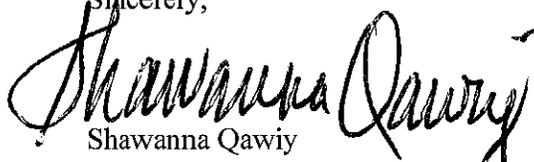
Thank you for your letter dated September 16, 2020. In light of your letter, the City of Clarkston has reevaluated the four sign applications submitted by Railroad Outdoor, LLC. We agree that we prematurely denied the applications based on the prohibition of pole signs.

Per your request, we have reviewed the four applications anew, keeping in mind your suggestion to look for the most specific applicable regulations. In so doing, we found several specific grounds requiring denial of each of the four applications. Please find enclosed documents reflecting the City Manager's official decision with regard to each application.

We will consider your September 16th letter to constitute written appeals of the four revised permit denials enclosed herewith. The Clarkston City Council will hear appeals of the four sign permit denials at its next regular meeting, which will be held on **October 6, 2020 beginning at 7:00 p.m.** City Code Sec. 15.5-26(b).

Due to Covid-19, this meeting will be held via Zoom pursuant to O.C.G.A. § 50-14-1(g). You may find instructions for joining the meeting by Zoom at clarkstonga.gov. If you would like to submit any documents for consideration by the City Council in connection with these appeals, please email them to City Clerk Tracy Ashby at tashby@clarkstonga.gov.

Sincerely,


Shawanna Qawiy
Clarkston Planning & Zoning Director

cc: Kelly Shaw
Mike Fitzgerald
Robin Gomez, City Manager
Tracy Ashby, City Clerk



CITY of CLARKSTON SIGN PERMIT REVIEW

Applicant's Name: Mike Fitzgerald Railroad Outdoor LLC PO Box 250633 Atlanta, GA 30325 Phone No.: 678.571.8889 Email: mike@railroadoutdoor.com	Address: Southerly portion of CSX ROW just inside (west) of I-285 Clarkston, GA 30021 Zoning District: None; railroad right of way
Property Owners Name(s) and Address: CSX Transportation Incorporated a Virginia corporation and Railroad Outdoor, LLC Mailing address: 500 Water Street, Jacksonville, Florida 32202 (CSX Transportation, Inc.)	A lease agreement with CSX was provided
DESCRIPTION OF REQUESTED SIGN(S)	
BILLBOARD SIGN : 14' x 48' CM 20' VEE @50' OAH LED Billboard Sign The applicant is requesting to erect a 14' x 48' CM 20' VEE @50' OAH LED Billboard Sign on the property located at the southerly portion of the just inside of I-285, Church Street (West of I-285). A 14' x 48' center mounted unit with 20'VEE and 50' over-all height with a drilled foundation base on 150 psf/ft. (x2) soils. Estimated size: 6' x 23' with approximately 18 yards of concrete.	
CITY MANAGER'S DECISION: DENIAL	

Reasons for decision:

- Signs are prohibited within public rights of way and utility easements. City Code Sec. 15.5-41(3)
- Signs are prohibited within the railroad right of way. City Code Sec. 15.5-41(4)
- Billboard signs are only permitted on parcels zoned RC, NC-1, NC-2, TC or I. City Code Sec. 15.5-63(b). The CSX Railroad right of way is not a parcel and does not have any of the permissible zoning designations.
- Billboard signs are prohibited within 500 feet of residential parcels. City Code Sec. 15.5-63(f). The proposed location is within 500 feet of residential property including, but not limited to, various residences on Creekdale Drive just north of the proposed location, on Pendleton Road southeast of the proposed location and the Highland Village Apartments east/northeast of the proposed location
- Billboard signs are prohibited within 1000 feet of other billboards. City Code Sec. 15.5-63(e). The other three billboard signs proposed by Railroad Outdoor are within 1000 feet of this location.

Re 7. Dwyer Date: 9-22-2020

Robin Gomez, Clarkston City Manager