

THE CITY OF HURON, OHIO
Proceedings of the Huron City Council
Work Session of Tuesday, January 14, 2025 at 5:45pm

Call to Order

The Vice-Mayor called the Huron City Council work session to order at 5:30pm.

Roll Call

The Mayor directed the Clerk to call the roll for the meeting. The following members of Council answered present: **William Biddlecombe, Sam Artino, Mark Claus, Joe Dike, Matt Grieves and Joel Hagy**. Member absent: **Monty Tapp**.

Old Business

None.

New Business

Discussion of Signs Located in the Public Right-of-Way

Mr. Lasko said that as the City over the last couple of years has increased our code compliance and zoning activities, there have been instances they have come across, as well as being complaint-driven, where we have found a handful (and they are probably only scratching the surface) of existing signs for businesses, or otherwise, that are in the right-of-way ("ROW"). Signs are usually not permitted in the ROW. If it were a new project, for example, the City would ensure as part of the site plan that any sign would not be in the ROW. However, over the course of the last 50/60/70 years, there have been a lot of signs placed in what is the ROW. They wanted to have a discussion on how to address these issues when they come up because there are a lot of them. People wouldn't even realize most of them are in the ROW and aren't a hazard by any means, but staff is looking for some direction on how to address existing signage in the ROW. Moving forward with new projects, this won't be a problem because it will be handled as part of the site plan review. Mr. Schrader wanted to talk through the issue, potentially some staff, and open it up for conversation in hopes of giving staff and the Law Department some direction on how to address existing properties with signs in the ROW.

Mr. Schrader stated that his plan is to talk about ROWs in general. What is the ROW? Where do they exist. The goal is to avoid reference to specific properties. They just want to talk in generalities on signage in the ROW and then talk about a proposed solution, or two, they have been discussion at the staff level.

The idea of the ROW come from federal regulations. The ODOT Right-of-Way Plan Manual states:

Federal regulations specify that the state shall acquire rights-of-way of such nature and extent as are adequate for the construction, operation and maintenance of a project. The location of right-of-way lines are determined, to a large degree, by construction limits. The right-of-way line, either permanent or temporary, must encompass the required area for construction activities. The right-of-way width should be sufficient to accommodate the proposed roadway. Many additional factors must be taken into consideration before final right-of-way lines are established. Factors that should be considered in the selection of right-of-way widths include, but are not limited to, utilities, traffic volume, staging for construction, real estate values, winter snow removal, storage difficulties, etc. It is essential that the selected right-of way width meet all requirements of the construction and maintenance of the highway.

When used in the right-of-way context as to property, a right-of-way includes the roadway, shoulders or berm, ditch and slopes extending to the right-of-way limits under control of the state or local authority. The right-of-way is generally understood as the easement acquired by the public and that portion of the land of the owner over which a road or highway passes with all the powers and privileges that are necessary or incident to such easement. The right-of-way of public roads is not an unrestricted right of the public to enter onto the private property of an abutting landowner but consists of rights necessary for the safe and efficient use of the road surface for actual vehicular and pedestrian travel.

They will be going over aerials to show that ROWs are not uniform. Some people have the misnomer that it is 30' off the center line, or it is 20'. There is no one unitary standard that is used for determining the ROW. Sometimes, the ROW goes beyond the property line. In some cases, the property line goes to the street and the ROW may go 30' onto the person's property. The property owner is allowed to use the property as they see fit, but the ROW can't be disturbed to the point that the city can't use it for snow removal, for safety reasons, for construction, etc. The fee interest under the right-of-way stays with the owner. It doesn't give the city the right to park stuff on the ROW or to use for other than a public purpose out of necessity for the roadway and roadway uses.

The City has an ordinance directly on point, Section 1129.02(a), which was first passed in 2015 and reads as follows:

No signs shall be permitted in the public right of way, except for the following: (1) Public / Safety signs erected by or on behalf of a governmental body, when approved by the City, to post legal notices, identify public property, convey public information, and direct or regulate pedestrian or vehicular traffic; (2) Informational signs of a public utility regarding its poles, lines, pipes, or facilities; and, (3) Awning, marquee and projecting signs projecting over a public right of way in conformity with the conditions of Section 1129.04 (i.e. maximum area and number of signs) and the height clearance conditions in Section 1129.05(c).

The general rule is there should be no business signage in the ROW. Mr. Schrader shows aerial photographs showed various relationships of ROWs in relation to the property line. In some cases, the property line and the ROW are the same. He noted that if you go on the Auditor's site to view property lines, don't assume they are correct. It is no indictment on the County, but a lot of the times it is not accurate, or they may confuse the ROW and the property line. The gold standard for determining property boundaries and ROW is by way of an engineer/survey. In other instances, the property line is at the centerline of the roadway, yet the ROW line extends onto the property at least 30'. The property line and the ROW are not always the same. There may be property with a property line going to the center of the road, while the ROW line can be wide in some areas and narrow in others, and can be, at times, misshapen.

They have found a handful of instances where there are signs in the ROW. In some cases, they are substantial and in other cases it may be a matter of feet, but they are not permitted. The question becomes what to do with those. Mr. Dike asked before the meeting about grandfathering. There is no grandfathering for infringements in the ROW. That is something the City must be able to maintain, and any encroachments of signs or infrastructure that is prohibited cannot be grandfathered. You don't earn easement rights against the City. Generally, the ROW is for health, safety, and to allow the City to be able to maintain streets, repairs streets and underground infrastructure, etc.

One possible alternative discussed by staff is to treat the existing signs (they would have to pass legislation to this effect) would be if there is signage in the ROW, that it would be permissible provided there is no other building and zoning violation, it is not substantial or in its current state is one that blocks sightlines or is so egregiously in the ROW that it needs to be moved (regardless of how long it has been there), that we treat it like a non-conforming use. If there is no other building or zoning violation and no other safety reason, we let it go, and we write an ordinance that effectively says the sign can remain in the ROW absent zoning violation or a safety issue. However, if the use stops (6 months or a year, whatever Council would determine) or changes, the sign needs to be moved out of the ROW. If there is a building or zoning violation on that property that is uncured, then the sign must be moved.

Mr. Artino added, unless they decide to go to the BZA and the BZA.... Mr. Shrader said that whenever someone gets a result they don't like from the City on a building or zoning matter, then their first right of appeal is to the BZA and if they lose there, then they have the right under ORC 2506 to file a civil lawsuit. If they get a result that they are not pleased with or want to appeal, their first right of appeal is to the BZA. That's generally what the BZA is for. If you don't agree with the building or zoning department or a City decision, BZA is the first stop. Mr. Dike asked if BZA can tell the City the sign can be in the public ROW. Mr. Schrader said inasmuch as the BZA is a quasi-judicial body, the City would have an ordinance on the books that directs the BZA to what the result certainly should be. This has happened a couple of times since he has been with the City. On anything of significant import, he has no authority to tell the BZA how to vote. He can't tell them what to do. However, he can give them background as to how other cases have been decided and give them counsel on how in other circumstances these things have resolved and how the court view this and permit them to make their decision. You can't stop them going to the BZA. Mr. Dike said it's not about stopping them, it's about the BZA allowing them to put it in the ROW. Mr. Schrader said, not if our ordinance says it can't. Mr. Dike said that's not true, the BZA doesn't have to answer to anybody. Mr. Schrader said the BZA needs to follow the law. Mr. Lasko said he thinks there is a difference between preexisting and new. New signage would have to go to the Planning Commission, which could not approve a site plan with signage in the ROW. BZA would be triggered with preexisting signage. The BZA could do this now because we don't have anything on the books. He thinks we are looking to at least have a little more teeth to address these issues when they come up. Right now, there is nothing as to how to address this signage that is existing other than the fact that you aren't supposed to have a sign in the ROW. If the City cited someone, they could go to BZA and then we don't have any type of guidance for them. He thinks there is a slight difference, to Councilman Dike's comment, in that we have way more control on new signage because that would probably fall under the purview of the Planning Commission than BZA, which would preexisting, because it would be subject to a site plan. Mr. Dike asked if there is something that brought all of this about. Mr. Schrader answered, not being specific as to a particular property, yes, it was complaint driven. Also, in looking at other projects you notice there is a survey or plat and the sign is in the ROW. Mr. Dike said he can remember Man Caves going into place. The sign is way out there, it blocks views, and it has approval. How did it get approval if signs can't be in the ROW? Mr. Schrader answered that they don't know what they don't know. Was a variance granted, did people approach the City and get authority? Mr. Lasko said that he guesses that on most of the commercial corridors, there is a ton of significant signage in the ROW. You wouldn't notice most of them because it doesn't block views and is not that close to the sidewalk, but in some of these areas, the ROW is so massive. Where it does create some challenges is that if you ask certain business owners to move that sign onto their property, a lot of them don't have the room or it would take away from needed parking. What they are hoping is to find a way to "grandfather" some of these in that aren't major safety issues. The City could grandfather in by way of ordinance that says, provided you don't have another violation, provided it's not an egregious violation of safety or the sightlines aren't bad, it can be treated as a nonconforming use until the use stops. The ordinance would say that we recognize that these exist in the

City and instead of going to every single one and saying, move your sign, it would make an accommodation with the hope that, long-range by attrition, changes the landscape. Mr. Claus asked if they would propose that any change in ownership for the same use would trigger removal. Mr. Schrader said that is a question they would have to analyze. A mere change in ownership would probably not be sufficient, but a change of use would be. If someone buys an existing business and that sign is already in the ROW and they are going to continue that business (they are buying the assets and they are going to call it their own), provided there is no violation, we let that go. If that person sells and the use changes or if they shut down and if it is dormant for 6 months/9 months/ a year, whatever Council prefers, that would be the trigger point to ensure that the sign was moved.

Mr. Claus said because there is, potentially, a significant number of signs in the ROW, if there was something going on with that road and we needed to use that spot where a sign is, they would have to move it at that point. Mr. Schrader answered yes, but doesn't think that it would be necessary to write into the ordinance because the City has to have the ability to widen its roads, do utility repairs, etc. If it's in the way, it will have to be moved. Mr. Hamilton said the existing ROW rules already allow the City to do that, so that wouldn't add that to new legislation.

Mr. Artino said he still has a concern that however they write this ordinance, if you have two property owners with signage in the ROW, the BZA says one can keep their sign, but other has to move theirs. Mr. Schrader said if we get to a point where the BZA is not following the law, they have bigger problems. If there is an ordinance on the books that is unambiguous and clear that benefits the City in the way it is designed to, they are going to have bigger problems. Mr. Artino said they are going to have to say this is written to give them as much directed as possible. The roundabout at Berlin Road didn't go in, not because Council didn't want it. It was because of all of the utilities and everything on all four of those corners. It would have cost a fortune. Mr. Schrader said if something like this came up with the BZA, between the staff and the Department providing a memo and physical presence, will ensure the ordinance will be followed. If it is not, the City has bigger things to talk about.

Mr. Biddlecombe asked about resident complaints regarding safety when a sign is in the ROW. Is this something that has been going on for a while or is this something relatively new? Mr. Lasko said he can probably count on one hand the complaints he has received, but there have been complaints, particularly relating to sightlines. It may be at an intersection where you must pull into the crosswalk to see around the sign – those are things where, at least in the ordinance, the City still needs to have the unilateral right to say it is safety issue. Do they still have appeal rights, yes, but he thinks they need that protection whether it's a determination from the police department, fire department or engineer that this is causing significant issues where people are having to pull into crosswalks just to get around the sign. Those will have limited flexibility. Mr. Claus said even if someone who was asked to move their sign out of the ROW for reason(s) discussed, they petition the BZA, and BZA approves the sign to be there, they are still in ROW and the City could still require, because of a specific project or something, them having to move it. He assumes BZA can't allow them to have a sign permanently in the ROW with their own unrestricted use when that's the City's ROW. Mr. Schrader said if Council passes legislation and BZA votes in a manner that is contrary to the ordinance, and then later the City has a utility problem or roadway issue or snow removal and the sign must be moved, the City still has to right to remove it.

Mr. Lasko said that people only go to the BZA when asking for permission to do something. If the City cites a property owner for a violation for something that's already constructed... he always thought that when the City cites for an offense, that is done in court – they don't go to the BZA. He has only seen cases go to the BZA for new things. Mr. Schrader answered that may be more common, but case law says that in the

event they get a result from the City that they are not satisfied with, particularly building and zoning, BZA is the first stop. They can go right to court, but there is an issue of whether they exhausted their administrative appeals. This is why the BZA must make their decisions on the record with all the factors that went into making the decision. Mr. Claus said it is important to get some additional clarity for the City to use when these issues come up. He doesn't see any reason not to proceed with preparing this legislation.

Mr. Artino said he is not against preparing the legislation. The day comes when we try to implement/enforce it, that's when there are going to be some issues. He agreed with Mr. Lasko that we haven't heard a lot about it, but he can remember years ago complaints about certain signage because of sightlines. He is not saying something shouldn't be done, he thinks there should be something in the books that gives them a right to stop it, but they are going to work something out where there is already something existing.

Mr. Schrader asked the direction they are going is to allow them to be maintained in the ROW, provided they are not a real serious issue, but if there is a building or zoning violation. Mr. Artino asked Chief Graham if he has heard of any issues with traffic. Chief Graham said that there have been issues before and they have usually contacted the person and tried to work it out. They have had issues with signs in the ROW. He has not recently received any sightline complaints.

With Council's direction, Mr. Schrader said they would start putting legislation together to get the ball rolling for discussion purposes only. They will investigate how other municipalities are treating this issue, as well.

Motion

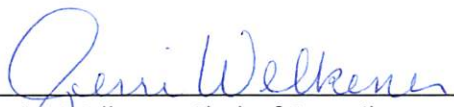
Motion by Mr. Biddlecombe to adjourn the work session.

The Vice-Mayor directed the Clerk to call the roll on the motion. Members of Council voted as follows:

YEAS: Biddlecombe, Artino, Claus, Dike, Grieves, Hagy (6)

NAYS: None (0)

There being a majority in a favor, the motion passed, and the work session was adjourned at 6:16pm.



Terri S. Welkener, Clerk of Council

Adopted: 28 JAN 2025