MEMORANDUM

To: Tacoma Billboards Community Working Group Members and Moderator
From: Doug Schafer, CWG Member (Central Neighborhood Council; lawyer)
Date: February 2, 2015
Subject: My Comments on the DRAFT (dated 1/30/15) Final Report

I offer the following comments and suggestions concerning the Draft of the Community Working Group's proposed Final Report that moderator Karen Reed sent to CWG members on 1/30/2015.

1. Page i, 3rd & 4th lines: "fraught with litigation between the City and Clear Channel Outdoor (the current owner of almost all billboards in the City) for over a decade." This is misleading. CCO's filed its lawsuit against the City on 7/26/07, and on 3/16/10 (**2 years, 7 months** later) their lawyers formally reported to the judge that their clients had reached a settlement that simply needed to be approved by the City Council, as it was in late July 2010. During that 2 years, 7 months period, the City and CCO negotiated rather than litigated. The City's attorneys filed nothing whatsoever in support of its code. On 8/18/2011, the City filed a lawsuit challenging the validity of the 2010 Settlement Agreement. **Twelve months** later, on 8/21/2012, the City and CCO agreed to the 2012 Standstill Agreement and mutually dismissed the lawsuit. So delete the phrase, "for over a decade."

2. Page i, 7th line: "all but 3 of 311 billboard faces – although legal when originally installed" should have the word "possibly" or "presumably" inserted before the word "legal." We don't actually know if all were "legal" when originally installed, and I am absolutely certain that the Code never allowed billboard in zone C-1, so regardless of City staffers' mistakes, billboards in those zones have never been legal. There also are billboards located too close to State Route 163 (Pearl St.) that were never issued permits under the WA Scenic Vistas Act, so they probably were illegal when installed. The penultimate paragraph on page 5 states more accurately that we "assume that nearly all billboards in the City were [legal when installed.]."

3. Page 1, 1st paragraph: Replace "findings and conclusions" with "views and recommendations" and replace "findings and process" with "views and process." The former phrase is judicial system terminology short for "findings of fact and conclusions of law" (as Moderator Reed, a lawyer, well knows), so its is quite inappropriate to refer to the non-lawyer members' opinions expressed this report as representing "findings and conclusions."

4. Page 3, 4th paragraph and footnote 2: "All our meeting materials, and summaries of each meeting, were posted online." This is not true—only materials from the first 4 meetings presently are posted. Posted materials should include emails and memoranda that CWG members sent to the Moderator and other CWG members. Concerning the footnote's website link, the City's webmasters easily could create a simple "alias" URL for that page. For example, the URL alias http://www.cityoftacoma.org/parking takes users immediately to

http://www.cityoftacoma.org/cms/one.aspx?objectId=27869. I suggest a URL alias such as cityoftacoma.org/billboards-cwg.

5. Page 5, penultimate paragraph, last sentence: "These 308 billboards are considered "nonconforming" -- legal, but inconsistent with the code." Not true. All billboards that were nonconforming under the 1997 ordinance have been ***illegal*** since August 1, 2007 when the code required that they be removed! Filing a lawsuit to challenge a duly adopted law does not repeal that law, nor does a City's officials' non-enforcement of a law repeal that law. The City's attorneys and officials reportedly agree that the 1997 ordinance's 10-year amortization provision that required removal of nonconforming billboards by August 1, 1997 was and still is constitutional and legal. The City's leaders simply are unwilling to bear the cost of enforcing the law.

6. Page 5, last sentence: "That code was significantly revised in 1997, further reducing the maximum number of billboards allowed under code, ..." Not true, the 1997 ordinance did not change the 1988 ordinance's cap on the number of billboards. The "cap" language in both ordinances was essentially identical, as shown by my attachment appended to this memo.

7. Page 6, top paragraph's last sentence: "In 2005, Clear Channel purchased the Tacoma billboard holdings of Ackerley Communications; since that time, they have owned nearly all of the billboards in the City." Not accurate. It should read, "Clear Channel purchased the Tacoma billboard holdings of Ackerley Communications on June 14, 2002, and those of Sun Media on March 31, 2003; and since that time it has owned nearly all of the billboards in the City."

8. Page 6 and globally: All references to "2012 code" should be changed to "2011 code," since it was the ordinance that was adopted August 9, 2011, that last significantly changed the code.

9. Page 6, last paragraph: "It should be noted that a few of the CWG members believe that the City should again pursue amortization and think that since this concept has been in code for seventeen years, all billboards subject to amortization by code (308 of 311 current billboard faces) should be considered illegal and removed." I suggest replacing this with the following:

The community members of the CWG believe that the City should enforce the 1997 code's requirement that all then nonconforming billboards be removed following the 10-year amortization period that expired over 7 years ago (August 1, 2007), except for signs that satisfy any newly adopted billboard regulations. In early 2011, City officials publicly reported that 60 of the City's then 253 billboards conformed to the 1997 code, but the CWG has learned that those reports were inaccurate. The number of billboard faces that were nonconforming under the 1997 code and have been illegal since August 1, 2007, is unknown. CWG members supporting the enforcement of amortization provisions offered reference materials showing that our state and nation's highest courts have upheld the constitutionality of such provisions.

10. Page 8, table's first row, right column, and footnote 5: The report's assertion that the 1988 code permitted billboards in C-1 commercial zone is simply false, notwithstanding that that era's City planning or permitting staff may have mistakenly believed that. The ordinances and code were and are in language that anyone accustomed to reading such laws can understand. I have provided CWG moderator and staff copies of the relevant ordinances and code. Mr. Harrington admits that by 1999 the code did not allow billboards in the C-1 zone, but contends that it did allow them in 1988, yet he refers to no ordinance adopted between those years that made any such change. The code's lists of the only permitted land uses in C-1 and C-2 zones—that expressly allowed billboards in C-2 but not in C-1—were unchanged between 1988 and 1997.

A comprehensive "sign code" section, TMC section 13.06.285, was enacted by Ordinance 23401 in 1985 that provided specific rules for different types of permanent and temporary on-premises signs and off-premises signs (including billboards) regardless of zone, and it included a "scope" provision that until 1992 read as follows at its paragraph A.1:

> "1. The provisions and requirements of this section shall apply to all signs in zones "C-1," "C-2," "C-3," "B," "M-C' and "M-1" as set forth in this chapter, unless otherwise specifically modified or exempted by the sign provisions of the underlying zone. Applicable sign regulations shall be determined by reference to the regulations for the zone in which the sign is to be erected."

That comprehensive sign code was re-codified in 1992 (Ord. 25085) as TMC section 13.06.550, and its "scope" provision at its subsection I.B.1 was slightly amended to read, as it still now reads at section 13.06.520.B.1, as follows:

> "1. The provisions and requirements of this section shall apply to signs in all zones as set forth in this chapter. Applicable sign regulations shall be determined by reference to the regulations for the zone in which the sign is to be erected."

Mr. Harrington told me that because in 1988 the sign code (TMC 13.06.285) stated in its scope provision that it applied to C-1 and other zones and because it included provisions regulating billboards, he believed that billboards must then have been permitted in the C-1 zone. By that flawed reasoning, because the 1992 and current sign code states in its scope provision that it applies to all zones and it includes provisions regulating billboards, then billboards must be permitted in all zones. That's ridiculous.

I submit that if the CWG had been correctly informed that the Tacoma code has prohibited billboards in the C-1 zone since at least the 1950s (an absolute fact!), the group would have recommended that they continue to be prohibited in the C-1 zone.

11. Page 9 table, 3rd cell, 2nd bullet: "Amortization period for existing non-conforming BB ends March 1, 2012 (an additional 6 months)." The parenthetical should read, "an additional 4 years, 7 months beyond the 1997 code's 10-year amortization period's expiration."

12. Page 13, third paragraph from the bottom, concerning zones T, C-1, and NCX: "Some viewed these zones as appropriate for billboards given that there are many billboards already in these zones and/or their high value to advertisers, given the amount of traffic in and along these areas." The phrase "there are many billboards already in these zones" applies only to the NCX zone, with its 37 billboard faces. There are only 4 faces in C-1 zones, and the 10 faces in a T zone are only those on the 5 billboard structures along about 1,000 feet of S. Tyler St. just north of S. 56th.

13. Page 17, table's last paragraph titled "Height," 2nd sentence: Change "Options considered include 30 ft. (current code for nearly all zones); 35 ft. (prior code);" to read, "Options considered include 30 ft. (1997 and current code for nearly all zones); 35 ft. (1988 code);".

14. Page 18, penultimate paragraph, second sentence following the dash: "—this means that the CWG is recommending buffers for two zones which currently do not have buffers: the Downtown Residential (DR) Zone, and the View Sensitive Overlay District (VSD)." I believe it is incorrect to assert that the DR zone does not have buffers. Since 1988, the code has prohibited billboards from being within a stated buffer from "a residential district." That buffer has increased from 100 feet in 1988, to 250 feet in 1997, to 500 feet in 2011. In 1985, the code required that billboards be "a minimum distance of fifty (50) feet from any residentially zoned property." I believe that the Downtown Residential (DR) zone is "a residential district" and property within it s "residentially zones property."

15. Page 22, Table 13, item 9: I don't recall the CWG voting to drop a requirement that "Alteration of street trees requires prior city approval," but even if so, that was only because other provisions of the City code prohibit unapproved alteration of the City-owned street trees so its inclusion in the special billboard regulations was unnecessary. This report should not be read as suggesting that the CWG recommends that Clear Channel be permitted to alter our City's street trees.

16. Page 23, bottom paragraph (repeated verbatim at page 37, table row 40): The assertion that most CWG members support an exchange should be qualified by the recognition that we were instructed that our City officials are unwilling force the removal of Clear Channel's illegal billboard by enforcing the 1997 code's amortization provision. If we cannot enforce the law to remove the illegal billboards, then Clear Channel can only be persuaded to remove them voluntarily by offering it something that it considers of comparable value to its illegal billboards—either money or alternative locations. Recognize that allowing the installation of new billboard only by owners of illegal billboards ensures that Clear Channel will be the only billboard company in the Tacoma market, and that may well cause Tacoma to get sued by other billboard companies wishing to install billboards under whatever new billboard regulations our City officials may determine.

Douglas A. Schafer

Ordinance No. 24230 (Nov. 15, 1988) at TMC 13.06.285.Q

l. a. Any person, firm, or corporation who maintains billboard structures and faces within the City of Tacoma shall be authorized to maintain only that number of billboard structures and faces that they maintained on April 12, 1988.

A person who maintains any such billboard structures and faces may thereafter relocate a billboard face or structure to a new location as otherwise authorized by this section. No other billboards shall be authorized, and there shall be no greater total number of billboard structures and faces within the City than the number that were in existence on April 12, 1988. That number of structures and faces shall include those for which permit applications had been filed prior to April13, 1988. As unincorporated areas are annexed to the City of Tacoma, the total number of billboard structures and faces in that area will constitute an addition to the number authorized in the City of Tacoma.

b. Upon removal of an existing billboard face or structure, a relocation permit shall be issued authorizing relocation of the face to a new site. There shall be no time limit on the billboard owner's eligibility to utilize such relocation permits. In the event that a billboard owner wishes to remove a billboard and does not have immediate plans for replacement at a new location, an inactive relocation permit shall be issued. There shall be no time limit on the activation of the inactive permit, and such permits are transferable. The application for a relocation permit shall include an accurate site plan and vicinity map of the billboard face or structure to be removed, as well as a site plan and vicinity map for the new location. Site plans and vicinity maps shall include sufficient information to determine compliance with the regulations of this chapter. The above provisions shall not apply to billboards whose permit applications were applied for prior to April 13, 1988, and not erected, unless the applicants/owners agree within sixty days to have such billboards subject to all the provisions of this ordinance.

c. Relocation permits shall be transferable upon the billboard owner's written permission.

d. In no case shall the number of billboard faces or structures increase, and the square footage of billboard sign area to be relocated shall be equal to or less than the square footage of billboard sign area to be removed. Removal of a billboard structure shall also require the issuance of a demolition permit, and removal of billboard faces and structures shall be completed prior to the installation of relocated billboard faces or structures. The billboard owner shall have the right to accumulate the amount of square footage to be allowed, at the owner's discretion to new sign faces and structures permitted under this chapter.

Ordinance No. 26101 (June 22, 1997) at TMC 13.06.551.N

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