

**APPELLATE COURT CASE NO. A08-233  
STATE OF MINNESOTA  
IN COURT OF APPEALS**

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Halla Nursery, Inc., Donald E. Halla  
and Sandra Cwayna Halla,

Respondents,

v.

City of Chanhassen, a municipal corporation,

Appellant.

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**APPELLANT'S BRIEF  
AND  
APPENDIX**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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## LEGAL ISSUES

1. Is the District Court's Conclusion of Law that the size of the sign faces are in substantial compliance with the 1997 Judgment supported by the Findings?

The District Court concluded that the sign faces were in substantial compliance with the 1997 Judgment.

2. Did the District Court err in determining that the City could not enforce the provision in the 1997 Judgment prohibiting an illuminated sign?

The District Court concluded that Respondents had acquired the right to illuminate the sign as a result of the City's delay in enforcing the 1997 Judgment.

Most Apposite Cases:

- *Stillwater Twsp. v. Rivard*, 547 N.W.2d 906 (Minn.Ct.App. 1996)
- *SLP Partnership v. City of Apple Valley*, 511 N.W.2d 738 (Minn. 1994)

3. Did the District Court err in allowing the sign to remain in violation of the 1997 Judgment which the Court concluded to be valid and enforceable?

The District Court concluded that the sign could be used in a manner most consistent with the pattern of prior use of an illuminated sign, the 1997 Judgment and the City Code in existence in 2005.

Most Apposite Case:

- *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604 (Minn. 1980)
- *Stillwater Twsp. v. Rivard*, 547 N.W.2d 906 (Minn.Ct.App. 1996)

## STATEMENT OF THE CASE

Respondents sued Appellant City of Chanhasen requesting a temporary and permanent injunction, or alternatively a writ of mandamus, prohibiting the City from interfering with the use and illumination of a business sign. The City counterclaimed, seeking a determination that the sign violates both the City Zoning Ordinance and a prior 1997 Judgment.

On August 2, 2006, the Court conducted an evidentiary hearing on Respondents' motion for a temporary injunction. On August 16, 2006, the Court entered its Order granting Respondents' motion for a temporary injunction. The Order allowed Halla Nursery to complete the construction of the sign and operate it in a manner that did not conflict with Chanhasen City Code §20-1259(2) which prohibits motion and flashing signs.

On April 16, 2007, the matter was tried to the Court without a jury. On August 8, 2007, the Court filed its Findings of Fact, Conclusions of Law, Order for Judgment and Judgment. The Judgment dismissed the Complaint in its entirety, awarded the City judgment on its Counterclaim and ordered that the electronic message center component of the sign be removed and that the sign comply with the 1997 Judgment.

Respondents brought a motion for Amended Findings. On December 10, 2007, the Court entered its Amended Findings of Fact, Conclusions of Law, Order for Judgment and Judgment. The Court made several minor amendments to its Findings. The Court then modified its Conclusions and ordered that the sign could remain, but must be operated consistent with the 1997 Judgment, the City Code in effect in 1995 and the

pattern of prior use as an illuminated sign. The Court then specified in its order the conditions of operation.

On February 7, 2008, Appellant served and filed its Notice of Appeal. On February 11, 2008, Respondents served and filed their Notice of Review.

### **STATEMENT OF FACTS**

Appellant's Statement of Facts set forth below adopt and set forth verbatim the Findings adopted by the Court.

1. Plaintiffs Donald E. Halla and Sandra J. Cwayna Halla are the fee owners of property located at 10,000 Great Plains Boulevard in the City of Chanhasen consisting of approximately 12 acres used for a retail nursery, garden center and contractors yard ("Halla Nursery Property"). (App.-40)

2. Plaintiff Halla Nursery, Inc., owned and operated by Donald and Sandra Halla, leases the Halla Nursery Property. (App.-40)

3. The Halla Nursery Property is located southwest of the intersection of Highway 101 and Pioneer Trail, with the entrance to the nursery on Highway 101, 1/4 mile south of the intersection. (App.-40)

4. Plaintiffs Donald Halla and Sandra Cwayna Halla also own property located in the southeast quadrant of Highway 101 and Pioneer Trail, which has recently been developed as a golf course and driving range. The sign that is the subject matter of this lawsuit is located on the golf course property. (App.-40)

5. In early 1994, Halla Nursery, Inc. constructed a new retail sales building of approximately 5,000 square feet on the Nursery Property without obtaining a building

permit, allegedly having been told that because the site was agricultural property, a building permit was not required. (App.-40)

6. On June 1, 1994, the City initiated a civil lawsuit against Halla Nursery, Inc. seeking to permanently enjoin Halla's operation of a retail commercial business from the new building without obtaining a building permit and satisfying the building code requirements for this type of use. (App.-40)

7. On February 10, 1997, the City and Halla Nursery, Inc. entered into a Stipulation for Entry of Judgment (hereinafter "Stipulation"). Donald E. Halla and Sandra J. Cwayna Halla, as fee owners, consented to and agreed in writing to be bound by the Stipulation. (App.-41)

8. Paragraph 6.A.3. of the Stipulation addressed the issue of signage in the southeast quadrant of Highway 101 and Pioneer Trail, which is part of the golf course property. It stated:

A. Permitted Signage. The following signs are allowed: \* \* \*

3. One off premises directional sign may be placed in the southeast quadrant of the intersection of Highway 101 and Pioneer on Lot 2, Block 1, Halla Great Plains Addition. The sign content shall be as approved by City Staff in the sign permit. The sign may not exceed eight (8) feet in height and seventy-two (72) square feet in size per sign face. The sign may have two sides back-to-back or "V" shaped. The sign shall not be lit. Before erecting the sign, a sign permit must be obtained from the City. The sign must be removed when the lot on which it is located is sold.

(App.-41)

9. The Stipulation also contained the following provisions:

6.C. PROHIBITED SIGNAGE. All signs are strictly prohibited, except as are expressly allowed pursuant to paragraphs 6A and 6B of this Stipulation, or pursuant to a sign permit issued by the City.

12. WAIVERS/AMENDMENTS. The action or inaction of the City shall not constitute a waiver or amendment to the provisions of this Stipulation. To be binding, amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the City Council. The City's failure to promptly take legal action to enforce this Stipulation shall not be a waiver or release.

18. PUBLIC INTEREST. This Stipulation shall be liberally construed to protect the public's interest.

(App.-41)

10. This Stipulation was incorporated into the Court's Order for Judgment and Judgment (hereinafter "1997 Judgment") which was entered on March 6, 1997 in the matter of *City of Chanhassen v. Halla Nursery, Inc., a Minnesota corporation*, Carver County District Court File No. C8-94-851. There have been no Amendments to the Stipulation. Although a portion of the owner's property was acquired through the right-of-way taking by MnDot, the lot on which the sign is located has not been sold. (App.-41-42)

11. The 1997 Judgment also contained the following provision:

2. Defendant Halla Nursery, Inc. is hereby permanently enjoined from using the Subject Property in violation of the Stipulation for Entry of Judgment. Defendant's violation of any obligation under the Stipulation will constitute immediate and irreparable damage to the Plaintiff not compensable in money damages and entitles the Plaintiff to preliminary and permanent injunctive relief to cure the violation upon application to the District Court.

(hereinafter "1997 Judgment"). (App.-36)

12. Donald Halla signed the Stipulation as president of Halla Nursery, Inc. and also signed the Consent to Stipulation in his individual capacity as fee owner of the property along with Sandra Cwayna Halla. (App.-42)

13. On January 31, 1997, the City issued a sign permit for the southeast quadrant of Highway 101 and Pioneer Trail, expressly "contingent upon approval and signing of the stipulation agreement." The approved sign faces were eight feet in height and 72 square feet in total area. The overall structure was listed on the permit application as being nine feet high by sixteen feet wide. The approved message on the two sign faces included the name of the nursery, a directional arrow with the words "1/4 mile ahead" and the telephone number. The approved sign did not show or describe any illumination (hereinafter "1997 Sign"). (App.-42)

14. Shortly after the 1997 Sign was erected, Chanhassen Community Development Director Kate Aanenson (hereafter "Aanenson") observed that the sign faces were illuminated in violation of both the permit and the Stipulation. (App.-42)

15. Aanenson contacted Mark Halla, the vice president of Halla Nursery, Inc., Donald Halla's son and signer on the 1997 sign permit application, about the fact that the sign was not suppose to be illuminated. Aanenson's discussion with Mark Halla became somewhat confrontational because there were a number of issues still to be resolved pursuant to the Stipulation. (App.-42-43)

16. Mark Halla did not remove the illumination, nor did the City take any further action to have the illumination removed. Aanenson testified that the City chose to

wait, assuming the property on which the sign was located would be sold in the near future and the sign removed in accordance with the Stipulation. The sign constructed in 1997 remained illuminated until it was torn down in 2005. (App.-43)

17. In 2005, MNDot was improving the intersection of Highway 101 and Pioneer Trail which necessitated the acquisition of additional right of way from Donald Halla and Sandra Cwayna Halla and relocation of the 1997 Sign. (App -43)

18. In 2005, Donald Halla on behalf of Halla Nursery, Inc. consulted with Paul Punt of Attracta Sign Company (“Attracta Sign”) about the design of a new sign and authorized the company to apply to the City of Chanhassen for a sign permit. (App.-43)

19. Donald Halla had actual knowledge of the 1997 Judgment provisions relating to the sign at the time he authorized Attracta Sign to make application for a new sign, but did not inform Attracta of the 1997 Judgment or the signage restrictions it contained, only saying that he had a signed stipulation with the City granting him the right to place a sign on the corner. (App.-43)

20. Donald Halla did not obtain an amendment to Paragraph 6.A.3. of the 1997 Judgment in writing signed by the parties and approved by the City Council by written resolution. (App.-43)

21. On March 28, 2005, the City received the Sign Permit Application for an illuminated monument sign on the southeast corner of Pioneer Trail and Highway 101. The applicant was Attracta Sign and the property owner listed as Don Halla. Attached to the permit application was a drawing of the proposed replacement sign, including notations that the sign was to be a double-faced, illuminated ground sign, with a “Full

Matrix Message Center,” and would be set back ten feet from the property line. (App.-43-44)

22. The sign application was processed by City Planner Josh Metzger who had started working for the City in 2004. Metzger was not aware of the 1997 Judgment, nor did he see that the proposed sign included two electronic message centers. (App.-44)

23. On April 8, 2005, Sign Permit No. 2005-0573 was issued to Attracta Sign for a new illuminated monument sign. Metzger sent the permit to Mr. Punt on April 11, 2005. (App.-44)

24. In February of 2006 and after the highway construction was complete, Metzger confirmed with Mr. Punt that the permit was still valid. Plaintiff then formalized the agreement with Attracta for the new sign, accepting Attracta Sign’s proposal for construction at a cost of \$124,000.00. (App.-44)

25. In March of 2006, Attracta Sign placed footings for the new sign. An individual from the Carver County Highway Department contacted the City claiming that the sign was being constructed in its right of way. On March 21, 2006, Metzger posted a stop work order. Halla and the County officials did not agree on the location of the right of way line which was eventually resolved. (App.-44)

26. As part of the setback investigation, and though the 1997 Sign had been installed at a ten foot setback, the City determined that a 25 foot setback is required in the Agricultural Estate zoning district in which the property is located. Plaintiff chose not to challenge the setback requirement and Attracta Sign subsequently moved the sign

footings back to comply with the 25 foot setback. On March 21, 2006 stop work order was lifted. (App.-44)

27. On April 17, 2006, the new sign footings were approved by the City Building Inspector and construction of the remainder of the sign continued. (App.-45)

28. On or about April 28, 2006, Metzger received a call from a homeowner in the area stating that a company called Daktronics was installing electronic message boards as part of the sign faces. That same day, Metzger went to the site, confirmed that electronic message boards were being installed and posted the second stop work order. Metzger had overlooked the reference to the electronic message board in the Sign Permit Application when he originally approved the permit. This was the first time the City realized the mistake. Donald Halla and Paul Punt testified that, at the time of the second work order, the final electrical connections were being made to put the sign into operation. (App.-45)

29. Metzger subsequently measured the new sign. Each sign face totaled approximately 120 square feet in surface area, which includes the 73.75 square foot electronic reader boards and the addition of an 18" x 12' 5" illuminated cabinet along the bottom (showing an arrow and "1/4 mile south" language) which was never shown on the plans submitted with the application and approved by the City. Metzger also measured the old sign faces which were still at the site. They measured 6 feet high and 12 feet wide or 72 square feet as allowed by the Stipulation and Judgment. (App.-45)

30. The property upon which the sign is located is zoned Agricultural Estate and guided in the City's Comprehensive Plan for residential use. (App.-45)

31. The sign is located in an area where it currently can be seen by single family homes. (App.-45)

32. Other moving and flashing signs within the City have been allowed subject to zoning restrictions and conditional use permits. (App.-45)

33. At the time of the issuance of the sign permit for the 2005 sign, the City of Chanhassen had adopted certain ordinances relating to the construction of signs within the City, including in the relevant parts:

SEC. 20-1259. PROHIBITED SIGNS.

The following signs are prohibited:

(2) Motion signs and flashing signs, except time and temperature signs and barber poles which may be permitted by conditional use permits (see sections 20-231 through 20-237).

SEC. 20-1265. GENERAL LOCATION RESTRICTIONS.

(e) Illuminated signs shall be shielded to prevent lights from being directed at oncoming traffic both in brilliance that it impairs the vision of the driver.... Illumination for a sign or groups of signs shall not exceed one-half foot candle in brightness as measured at the property line.

(App.-46)

34. The Court was provided with a video tape of the 2005 sign when it was in operation. The sign, when in message board mode, changes to a new message approximately every six seconds. As it is along a county road which otherwise does not have commercial signage, the brilliance and changing messages could be distracting to traffic and an annoyance to residences that have a view of the sign. (App.-46)

35. The sign was installed under the terms of a contract with Halla Nursery, Inc. and Attracta Sign at a total cost of \$124,000, half of which was paid at the time the contract was signed and the remaining half of which was paid for prior to the hearing on this matter. (App.-46)

36. The electronic message centers are components purchased by Attracta Sign from a company called Daktronics. The electronic message centers can be removed and reused at a different location, however they would have to be discounted because of constantly changing technology. (App.-46)

37. Plaintiffs can substitute unilluminated, directional sign faces that comply with the 1997 Judgment. (App.-47)

38. The sign violates the Chanhassen City Code in that it is an off premises sign generally advertising the Halla Nursery business, is too large for the Agricultural Estate Zoning District and is a moving and flashing sign not approved by conditional use permit and located on property zoned Agricultural Estate. (App.-47; Conclusion of Law No. 3)

39. The sign also does not comply with the plans approved by the City. (App.-32; Trial Ex. 5, Metzger Aff'd., ¶ 14)

### ARGUMENT

**I. The Findings of Fact do not support the District Court's conclusion that the sign faces are in substantial compliance with the 1997 Judgment.**

The District Court, quoting from the 1997 Judgment, states that the sign may not exceed 72 square feet in size per sign face. (App.-41; Finding No. 8) Referring to the

new sign, the Court then states that “each sign face totaled approximately 120 square feet in surface, which includes 73.75 square foot electronic reader boards and the addition of an 18” x 12’ 5” illuminated cabinet along the bottom.”<sup>1</sup> (App.-45; Finding No. 29)

The Court then concludes that the sign faces, which the Court references as being 73.75 square feet, are in substantial compliance with the Judgment. (App.-47; Conclusions of Law No. 2)

As the Court correctly determined in Finding No. 29, each sign face includes the entire 120 square feet of sign surface area used for advertising the nursery, not just the portion utilized for the electronic reader board. The conclusion that each sign face substantially complies with the 72 square foot limitation is not supported by the Court’s Finding that each sign face is approximately 120 square feet in surface area. There simply is no legal or factual basis for excluding the non-illuminated portion of the sign face from the size calculation.

**II. The City is not prevented by its inaction from enforcing the provision in the 1997 Judgment prohibiting the illumination of the sign.**

The District Court concluded that the 1997 Judgment remains valid and enforceable. (App.-47; Conclusion of Law No. 1) The Court then concludes that the City “allowed” Halla to operate an illuminated sign for 8 years (App.-47; Conclusion of Law No. 5) and that Halla is entitled to use the sign in a manner consistent with the pattern of prior use as an illuminated sign. (App.-48; Conclusion of Law No. 9)

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<sup>1</sup> In addition to the electronic reader board and illuminated cabinet along the bottom, the sign face area also includes an area above the reader board which advertises the nursery. (Tr. Ex. 5, Metzger Aff’d., ¶ 14 and attached Exhibits G, H and I)

The circumstances relating to the illumination of the old sign are undisputed and specifically set forth in the Court's Findings No. 14, 15 and 16. Donald Halla illuminated the old sign in blatant violation of the 1997 Judgment. The City's Community Development Director told Don Halla's son, Mark Halla, that the sign was not suppose to be illuminated and Halla refused to comply. The City did not take any enforcement action, choosing to wait, assuming that the property would be sold in the near future and the sign removed in accordance with the 1997 Judgment. (App.-42-43)

The old sign had a wooden frame with lettering on plywood faces, illuminated by attached lights shining on the faces. (Tr. Ex. No. 1, Transcript of 8/2/06 hearing, pp. 53-55) The new sign, by contrast, is illuminated by two 73.75 square foot reader boards, which are essentially large, full color, instantly programmable computer screens that can exhibit a full array of moving color and light. There is also an internally illuminated cabinet along the bottom of the sign face. All of this is in addition to the non-illuminated portion of the sign faces. (Tr. Ex. 5, Metzger Aff'd., ¶ 14 and attached Exhibits G, H and I)

The Stipulation signed by Respondents which was incorporated into the 1997 Judgment specifically states that the City's "failure to promptly take legal action to enforce this Stipulation shall not be a waiver or release." (App.-41) This provision in the Judgment is reinforced by Minnesota case law holding that a lapse of time does not diminish a municipality's ability to enforce its zoning ordinance. *Stillwater Twsp. v. Rivard*, 547 N.W.2d 906, 910 (Minn.Ct.App. 1996); *SLP Partnership v. City of Apple Valley*, 511 N.W.2d 738, 743 (Minn. 1994).

The Court's determination that Halla Nursery acquired the right to have an illuminated sign, yet alone electronic message centers, in violation of the 1997 Judgment as a result of Halla's belligerent refusal to comply is clearly erroneous. The conclusion is contrary to the explicit terms of the 1997 Judgment and Minnesota case law.

**III. The Court's misuse of the vested rights doctrine to allow Respondents to have an illuminated sign is clearly erroneous.**

The District Court initially ordered Respondents to remove the electronic message center components of the sign and bring the sign into compliance with the 1997 Judgment. (App.-34) The Court then, in response to Respondents' Motion for Amended Findings, again found the 1997 Judgment to be valid and enforceable, but then modified its decision to allow Halla Nursery to keep the sign. The Court stated:

After careful consideration, the Court is reversing its decision as to the doctrine of vested rights, but only so far as to allow the Plaintiff the use of the sign under limitations which prevent the substantial violation of the prior history of use, the 1997 Stipulation and the zoning ordinance in effect in 2005.

(App.-52)

The District Court correctly rejected Respondents' argument that the City was equitably estopped from enforcing the 1997 Judgment. The District Court stated:

However, a municipality cannot be estopped from correctly enforcing its zoning ordinances (or related land use agreements such as the Stipulation at issue in this matter) even if the property owner relied to his detriment on prior city action. *Frank's Nursery Sales, Inc. v. City of Roseville*, 295 N.W.2d 604, 607 (Minn. 1980).

(App.-53)

The District Court added:

The Plaintiff is not entitled to additional rights to operate the sign under the doctrine of equitable estoppel. Donald Halla had actual knowledge of the 1997 Stipulation and Judgment when he ordered the sign from Attracta. Donald Halla knew or should have known that the size, illumination and use of the sign in a manner that was not “directional” were in violation of the 1997 Stipulation. Donald Halla had actual knowledge or could have easily ascertained that the City zoning ordinance prohibited flashing or motion signs and limited the brilliance of the sign. Although the Plaintiffs properly applied for a sign permit, they cannot claim surprise or inequitable conduct when the City subsequently sought to enforce the 1997 Stipulation and its ordinance. As a result, the Court will not amend its findings to find that Defendant is estopped from claiming they made a mistake in issuing the permit.

(App.-54)

The vested rights doctrine, which has extremely limited application, exists to protect property owners from changes in zoning laws aimed at frustrating development. *See, Hawkinson v. County of Itasca*, 231 N.W.2d 279 (Minn. 1975); *State ex rel. Berndt v. Iten*, 106 N.W.2d 366 (Minn. 1960); *Kiges v. City of St. Paul*, 62 N.W.2d 363 (Minn. 1953).

The *Hawkinson* case involved a change in the law after the property owner had commenced work on a project. Specifically, the county rezoned plaintiff’s resort property to residential. The court identified the issue as “whether the plaintiff has acquired a vested right to complete the work which he has commenced.” *Hawkinson*, 231 N.W.2d at 280. In *Berndt v. Iten*, the Village of Osseo changed the zoning ordinance to prohibit the use of plaintiff’s property after he had acquired it to develop a mobile home park. 106 N.W.2d 366. The court determined that the owner did not have any vested rights under the prior ordinance. In *Kiges*, the City of St. Paul rezoned plaintiff’s

commercial property to residential after he had purchased it to build a retail dry cleaning establishment, obtained a building permit and commenced construction. Again, the court found that the property owner had not acquired any vested rights to complete the project.

Most recently in *Yeh v. County of Cass*, the court stated:

But the doctrine of vested rights exists to protect developers from changes in zoning laws aimed at frustrating development. *See, Naegele Outdoor Adver. Co. of Minneapolis v. City of Lakeville*, 532 N.W.2d 249, 254 (Minn.Ct.App. 1995) (holding that, where appellant did not submit permit application until four years after the ordinance in question was amended, appellant had no vested rights), *review denied* (Minn. July 20, 1995). And “[a] property owner is charged with knowledge of whether a local zoning ordinance permits construction undertaken on the property.”

696 N.W.2d 115, 132 (Minn.Ct.App. 2005) (citing *Stotts v. Wright County*, 478 N.W.2d 802, 805 (Minn.Ct.App. 1991).

In *Naegele*, 532 N.W.2d at 254 the court held that the billboard company had no vested right to construct replacement billboards under a repealed ordinance. In *Property Research and Dev. Co. v. City of Eagan*, the city denied a preliminary plat to develop single family homes. 289 N.W.2d 157 (Minn. 1980). Prior to trial the city changed its zoning ordinance to prohibit single family homes which had been allowed at the time the city denied the plat. The court dismissed plaintiff’s mandamus action on the basis that the ordinance was amended to prohibit the development prior to trial and “there is no vested right in zoning.” *Id.* 289 N.W.2d at 158.

It is crystal clear that the doctrine of vested rights does not apply to this situation where the City is seeking to enforce the existing regulation after a mistake was made in the issuance of a permit. The vested rights doctrine, which has extremely limited

application, only comes into play when a land use that was permitted subsequently becomes prohibited because the city amends its zoning ordinance. That is not the situation in this case. The District Court correctly applied the holding in *Frank's Nursery*.

The District Court is apparently using the term vested rights to mean that Halla Nursery can keep the sign so long as it does not violate the 1997 Judgment or the zoning ordinance in effect at the time. The Court is also erroneously granting Halla Nursery a vested right to illuminate the sign in violation of the 1997 Judgment because the City had delayed enforcement of this provision. As discussed above, Halla Nursery did not acquire any vested rights as a result of the belligerent refusal to comply with the 1997 Judgment and the City's decision to delay enforcement.

The City has never taken the position that Respondents could not replace the old sign. To the extent that Halla Nursery has a new sign which complies with the 1997 Judgment and zoning ordinance, there is no issue. No equitable estoppel, vested rights or other legal analysis is necessary.

As discussed above, the District Court erred in two regards; i.e., (a) granting Halla the legal right to have an illuminated sign; and (b) determining that the sign faces comply with the size limitation in the 1997 Judgment in contradiction of the Court's own Findings.

In sum, the Court correctly determined that the City cannot be estopped from enforcing the 1997 Judgment. The doctrine of vested rights does not come into play because the use was not legal when the sign permit was erroneously issued. This is not a

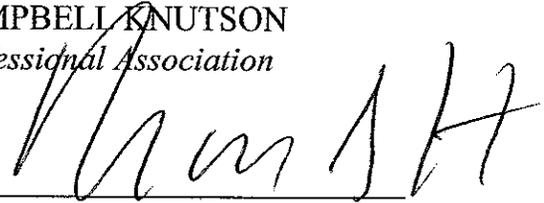
situation where the City changed the zoning ordinance after the permit was issued to make something previously legal now illegal. The Court's use of the vested rights doctrine to allow an illuminated sign is clearly erroneous.

**CONCLUSION**

Appellant requests this Court to modify the Judgment. Appellant should be granted Judgment on its Counterclaim ordering Respondents to remove the electronic message center components of the sign and bring the sign into compliance with the 1997 Judgment.

Respectfully submitted this 29th day of May, 2008.

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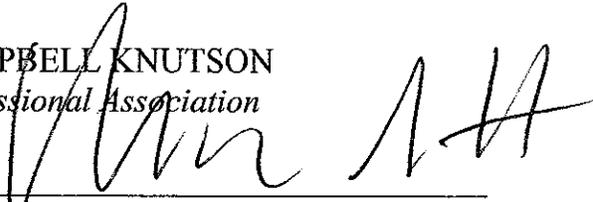
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**CERTIFICATION OF BRIEF LENGTH**

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subs. 1 and 3, for a brief produced with a 13 pt. Times New Roman font. The length of the brief is 5,175 words. This brief was prepared using Microsoft Word software.

Dated: May 29, 2008

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