

**STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF TRANSPORTATION**

**In the Matter of Applications of Hoey
Outdoor Advertising for Advertising
Device Permits in the City of Harris.**

**FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge (ALJ) Richard C. Luis on May 21, 1996, at 9:30 a.m. in Room 125 State Capitol Building, 75 Constitution Avenue, St. Paul, Minnesota. The record in this matter closed on July 3, 1996.

John C. Jeppesen, Assistant Attorney General, 525 Park Street, Suite 200, St. Paul, Minnesota 55103-2106, appeared on behalf of the Minnesota Department of Transportation. ("Department," "MNDOT").

Marc J. Manderscheid, Doherty, Rumble & Butler, 2800 Minnesota World Trade Center, 30 East Seventh Street, St. Paul, Minnesota 55101-4999, appeared on behalf of Hoey Outdoor Advertising, Inc. ("Applicant," "Hoey").

Intervenors Karen Charbonneau and Lawrence Charbonneau ("Charbonneaus"), 43109 Frontage Road, Harris, Minnesota 55032, appeared on their own behalf.

This report is a recommendation, not a final decision. The Commissioner of Transportation will make the final decision after a review of the record and may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendation contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to the Commissioner. Parties should contact James N. Denn, Commissioner of Transportation, 411 Transportation Building, 395 John Ireland Boulevard, St. Paul, Minnesota 55155; telephone 612/297-2930, for information on filing exceptions and presenting argument.

STATEMENT OF ISSUE

Whether the Minnesota Department of Transportation's denial of three outdoor advertising device permits to Hoey Outdoor Advertising for locations along Interstate Highway 35 at Harris, Minnesota was appropriate.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Karen and Lawrence Charbonneau are landowners of property located near the southeast corner of the intersection of I-35 and County State Aid Highway 10 at Harris, Minnesota (Chisago County). The property consists of a long narrow parcel of 3.09 acres immediately to the east of I-35, a .89 acre parcel immediately south of the above property, a parcel of 47 acres located east of the two small parcels, and a larger parcel of 87 acres located south of the 47 acre parcel. The property is accessed by a frontage road which extends south from County Road 10 to the Charbonneau property. (Ex. 1, Testimony of Mrs. Charbonneau).

2. The 3.09 and .89 acres are zoned "B" (general business) and the 47 and 87 acre parcels are zoned "R-2" (rural residential). (Ex. 1). The 3.09 and the .89 acres were rezoned from rural residential to general business by the Harris City Council on May 15, 1995. (Ex. 9). The rezoned area is about 98 feet wide at its north end, widening to a maximum of 122.4 feet wide and then narrowing to a point at the south end. The length of the rezoned parcel from north to south is approximately 2500 feet. (Ex. 1)

3. Immediately to the north of the Charbonneau real estate, in the southeast quadrant of the interstate interchange, is property owned by David C. Anderson, which is zoned "B" (general business). The property contains two businesses, Fish Lake Bait and Tackle and North Metro Auto Auction, and an outdoor advertising device. (Ex. 1).

4. The southwest quadrant of the interstate interchange is zoned "B" (general business) and contains a manufacturing facility, Concord Stone. The northwest and northeast quadrants of the interchange are also zoned general business. No businesses are located in the northeast and northwest quadrants. (Ex. 1). The four quadrants of the interchange have been zoned "B" (general business) since approximately 1965. (Testimony of Mr. Constant.)

5. The Charbonneaus initially discussed the possibility of commercial development of their property between themselves in May of 1992 when the traffic on the freeway increased due to the opening of Grand Casino in Hinckley, Minnesota. The opening of the Concord Stone business in the southwest quadrant of the interchange in approximately 1993 also led the Charbonneaus to believe that the City was going to encourage development in all four corners of the interchange and that their property would be the next logical area to develop. (Testimony of Mrs. Charbonneau).

6. In the winter of 1994 -1995 the Charbonneaus had informal discussions with the Harris City Planning Commission and City Council about using the 47 acre parcel for commercial purposes and about what types of development would be allowed on their property. Possible uses discussed with the Council included a hotel and a 24 hour convenience store. They also checked into the tax consequences of various commercial

businesses and considered the options of selling, leasing, or renting the property. Bill Wolke, the brother-in-law of Mrs. Charbonneau and a licensed car dealer, also approached the Charbonneaus about showing automobiles on the two small parcels along I-35. (Testimony of Mrs. Charbonneau).

7. In April 1995, Mr. Charbonneau went to a Council meeting to find out if he and his wife would be allowed to show automobiles on their property along the freeway. The City Council members said that they could commercialize that strip of land, and advised Mr. Charbonneau to go to the Planning Commission because the Commission would have to vote on the matter. (Testimony of Mrs. Charbonneau).

8. The April 25, 1995 minutes of the Harris Planning Commission state that Larry Charbonneau requested rezoning from R2 to Commercial on the 3.09 acre and .89 acre parcels. A hearing was set for May 9, 1995, to address the request. No discussion on the reason for the rezoning was set forth in the minutes. (Ex. 8). The meeting minutes refer to the two small parcels as being rezoned to "Commercial." However, the Harris Zoning Ordinance uses the term "B" (general business) for this type of commercial zoning.

9. On May 9, 1995, the Harris Planning Commission conducted a special hearing at which they granted Larry Charbonneau's request for rezoning from R2 to general business on the two small narrow parcels east of I-35 and south of the property owned by Mr. Anderson in the southeast quadrant of the interchange. (Ex. 4). There was no discussion in the minutes as to the reason for the rezoning or what might be built on the property. The minutes only included a legal description of the property to be rezoned.

10. At the May 9, 1995 meeting, the Commission asked Mr. Charbonneau several questions regarding the property. They asked him what he planned on doing with the property, and Mr. Charbonneau stated that his brother-in-law wanted to put cars there, that there was a neighbor who sells garages off of Highway 61 whose father had an interest in putting a garage or two there, and that another neighbor had expressed an interest in opening a flea market there. Mr. Charbonneau also mentioned the idea of putting up billboards because, at that time, he had already been contacted by Diane Hoey, the Applicant, about erecting billboards on the property. The Commission had no problem with any of the ideas presented by Mr. Charbonneau. (Testimony of Mrs. Charbonneau).

11. On May 15, 1995, the Harris City Council approved a motion to rezone the small parcels owned by the Charbonneaus from "R-1" (residential) to "B" (general business). No further comments appear in the meeting minutes regarding the reason for the rezoning. (Ex. 9).

12. On July 27, 1995, Diane Hoey of Hoey Outdoor Advertising, Inc. submitted three Department of Transportation advertising device permit applications to Mike Constant, Division Advertising Control Agent with the Department. The three

applications were dated June 27, 1995, signed by the landowners, Karen and Larry Charbonneau on May 23, 1995, and signed by the Harris City Clerk, Bonnie Swanson on July 6, 1995, with a statement that the land is zoned commercial. (Ex. 3).

13. The three outdoor advertising devices are proposed to be located in a line along Highway I-35. Moving from north to south, the distance from the top of the property line to the first sign placement is 700 feet. From the first sign to the second sign is a distance of 750 feet and the distance from the second sign to the third sign is 680 feet. (Ex 1). The signs, which will measure 14 feet high by 48 feet wide, are planned to be located on the two small parcels which have been rezoned to general business.

14. On July 28, 1995, after receiving the permit applications, Mr. Constant contacted the City of Harris regarding the zoning of the area, and determined that the property had been rezoned recently from "R-2" (residential) to "B" (general business). Mr. Constant spoke with Bonnie Swanson and questioned her on the zoning change. She indicated that the landowner wanted it changed from agriculture to business and that the City did not really want billboards there. (Testimony of Mr. Constant.)

15. On August 8, 1995, Larry Charbonneau contacted Mr. Constant. Constant asked Charbonneau what type of commercial business he planned for the area. Charbonneau said that he wanted the area rezoned for the erection of billboards. Constant explained that, if that was the case, the area was not zoned using a comprehensive plan, this would not be considered proper zoning and in fact would be considered strip zoning and he could not issue state permits for that. Charbonneau then stated that he and his wife might start a used car lot there someday. (Testimony of Mr. Constant).

16. On August 8, August 23, September 20, September 25, and October 5, 1995, Mr. Constant called the City of Harris and asked to be sent copies of the Council minutes, plans, zoning maps and other information pertaining to the rezoning. The City did not send any of the requested information to Mr. Constant until after a later request by Mr. Constant on February 27, 1996. (Testimony of Mr. Constant).

17. On October 5, 1995, Bonnie Swanson indicated to Mr. Constant that the information noted in the preceding Finding would not be forthcoming and that they did not have any information to send him. Mr. Constant asked Ms. Swanson how this rezoning came about. She indicated that Mr. Charbonneau came to the May 9, 1995, City Planning Commission and asked that his land be rezoned commercial. He did not supply any information, did not say why and did not have a plan to present to them. Ms. Swanson told Mr. Constant that the Planning Commission did not ask for any information.

18. On October 19, 1995, Mr. Constant wrote a letter to Ms. Hoey denying the permit applications that she had submitted. In denying the applications, Constant stated that the question at hand is whether or not the property is properly zoned to allow the erection of advertising devices. Mr. Constant stated that he made five separate

requests for information on the rezoning of the Charbonneau property. Mr. Constant requested the Council minutes, Planning Commission minutes, a copy of the City's comprehensive plan and a copy of Mr. Charbonneau's plan or any other information used in the rezoning of this property. Mr. Constant explained that Mr. Charbonneau had informed him that he did not have any commercial plans for the property, that he just wanted the land rezoned so he could put up billboards. His denial letter cites the federal regulation, 23 CFR § 750.708(b), which states:

State and local zoning actions must be taken pursuant to the State's zoning enabling statute or constitutional authority and in accordance therewith. Action which is not part of comprehensive zoning and is created primarily to permit outdoor advertising structures, is not recognized as zoning for outdoor advertising control purposes.

Mr. Constant concluded that it did not appear from the information he received that the property in question was properly rezoned from R-2 to Commercial. (Ex. 5)

19. On December 18, 1995, after the applications had been denied by MNDOT, Hoey Outdoor Advertising sent a letter from Larry Charbonneau to Mike Constant which attempted to explain the reasons for rezoning the property. He stated in part:

"The land to the north is zoned commercial and my property will logically be used for commercial use in the future. The traffic has increased significantly due to the opening of the Casino at Hinckley. Also, the City has annexed the land across the Interstate from us and this has been developed commercially, along with the opening of a metro auto-auction lot which abuts our land....

I've had discussions and meetings with potential lessees to develop the property as a used car lot and for the sale of propane fuel...

I've attended a few planning commission meetings in Harris for the purpose of getting the correct information on what I can do with my property. The frontage road is city maintained and governed and I was assured there will be no problem or restrictions on any use I may wish to impose.

...I was asked at that meeting if I had 80 acres which are available for heavy industry- I do. We have 131 acres are (sic) are willing to rezone them as necessary.

(Ex. 6).

20. On or about December 18, 1995, after reading Mr. Charbonneau's letter, after determining that propane storage could not be located in a "B" district and considering the physical configuration of the property, Constant orally informed Ms. Hoey that he would not issue the permits.

21. On January 24, 1996, Diane Hoey requested an administrative hearing on the denial of the permits. (Ex. 7).

22. On February 23, 1996, Harris City Clerk Bonnie Swanson wrote a letter (Hoey Hearing Brief, Attachment I) to Mike Constant, which stated:

“The recent development and commercial highway business zoning along the Harris four-way interchange (I-35 and County Rd 10) is an effort by the City of Harris to include and promote business development for the City of Harris. The four corners around the Harris exit have all been zoned commercial and are planned for the City’s future business expansion”.

Mr. Constant did not receive this letter from Bonnie Swanson.

23. On February 27, 1996, Mr. Constant again contacted Ms. Swanson and asked for the information that he had requested in 1995 but had not received. This time the City said it had information and would send it. That afternoon the City faxed several pages of information to Constant. The information included sketches of the rezoned property that the City indicated were originally included in Charbonneau’s rezoning request. (Ex 10). Mr. Constant also received a copy of the Planning Commission minutes of April 25, 1995 and of the City Council meeting minutes for May 15, 1995. Neither of these sets of minutes articulate any reasons for the rezoning.

24. In February of 1996, the Charbonneaus received a letter from the City regarding possible future development (opening of a truck stop and truckers motel) by the owner of the adjacent auto auction (Mr. Anderson) on land north of their small parcels. The proposed businesses would be located east of the auto auction now on Anderson’s property. (Testimony of Mrs. Charbonneau).

25. On March 7, 1996, Mr. Constant and Gary Erickson, Site Development Coordinator for MNDOT, met with David Christianson, Acting Mayor of the City of Harris and a member of both the Planning Commission and the City Council, to discuss the rezoning of the Charbonneau property. Mr. Constant and Mr. Erickson asked Mr. Christianson how it was zoned, what types of plans they had and what type of plans were presented for the rezoning of the parcels. Christianson did not supply them with any information and did not have any information on the property. He stated that someday the whole area would be rezoned. A comprehensive zoning plan was requested but the City had none. (Ex. 5).

26. Under the Harris Zoning Ordinance, setback requirements apply to billboards. In § 601.15(5)(E), the front yard setback is 60 feet from the front lot line, the side yard setback is 20 feet from the side lot lines and the rear yard setback is 35 feet from the rear lot line. (Ex. 12). The "front" of the rezoned tract is its west side, which abuts I-35 and is the only side adjacent to a road. When the 60 foot front setback and the 35 foot rear setback are subtracted from the deepest (122.4 feet) part of the rezoned parcels, only an area 27.4 feet deep is left for improvements. The land available for improvements is even

more narrow elsewhere on the parcels. Unless a variance is obtained, no development is allowed on any part of the land less than 95 feet in depth.

27. Pursuant to Hoey's request for a hearing, a Notice of Hearing was issued on April 9, 1996 setting the hearing for May 21, 1996. On April 19, 1996, Karen and Lawrence Charbonneau filed a Petition to Intervene. The Administrative Law Judge granted the Petition pursuant to Minn. Rule 1400.6200.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Transportation have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50 and 173.13.

2. Proper notice of the hearing was timely given and all relevant substantive and procedural requirements of law and rule have been fulfilled.

3. Any of the foregoing Findings properly considered Conclusions of Law are hereby adopted as such.

4. Pursuant to Minn. Rule 1400.7300, subp. 5, the applicant, Hoey Outdoor Advertising, has the burden of proving by a preponderance of the evidence the facts necessary to support Hoey's claim that MNDOT's denial of its three sign permit applications was not appropriate.

5. The State of Minnesota and the Federal Highway Administration of the United States Department of Transportation entered into an agreement on November 18, 1971 for carrying out the national policy relative to the control of outdoor advertising in areas adjacent to the national system of interstate and defense highways and the federal-aid primary system.

6. United State Code, Title 23, § 131(a) provides "The Congress hereby finds and declares that the erection and maintenance of outdoor advertising signs, display, and devices in areas adjacent to the Interstate System and primary system should be controlled in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty."

7. 23 C.F.R. § 750.708 provides, in part, "... (b) State and local zoning actions must be taken pursuant to the State's zoning enabling statute or constitutional authority and in accordance therewith. Action which is not a part of comprehensive zoning and is created primarily to permit outdoor advertising structures, is not recognized as zoning for outdoor advertising control purposes."

8. Minn. Stat. Chapter 173 allows state and local sign authorities to issue or deny advertising sign permits.

9. Minn. Stat. § 173.01 provides, in part, "...in as much as outdoor advertising is an integral part of the business and marketing function, an established segment of the national economy, and a legitimate commercial use of property adjacent to roads and highways, it should be allowed to operate where other business and commercial activities are conducted, and the regulation of outdoor advertising should occur by the application of reasonable regulatory standards consistent with customary use of outdoor advertising and rezoning principles in this state....It is the intention hereby to comply with the policies declared by Congress in United States Code, title 23, "Highways."

10. Minn. Stat. § 173.16, subd. 5(1) provides that "Whenever a bona fide county or local zoning authority has made a legitimate determination of customary usage and in the judgment of the commissioner, reasonably provides for size, lighting and spacing control of advertising devices, such determinations shall be accepted in lieu of the provisions of this chapter in the zoned commercial and industrial areas within the geographical jurisdiction of such authority."

11. Minn. Stat. § 173.16, subd. 5(3) provides that "The commissioner may not disapprove any zoning ordinance adopted by a county or local zoning authority that has the effect of establishing a business area unless the zoning ordinance would result in the loss to the state of federal highway funds."

12. Minn. Stat. § 173.185, subd. 1 provides that "The commissioner of transportation shall comply with federal law and federal rules and regulations relating to billboard control on the interstate and primary systems, and is authorized to do all necessary acts and things, including,...entering into binding agreements with the United States...to the end that the objectives stated in United States Code, title 23, section 131, section 319, or any other applicable federal statute, and the rules and regulations...be accomplished on the interstate and primary systems of highways."

13. Minn. Stat. § 173.20 provides that "Nothing in sections 173.13 to 173.231 shall be construed to abrogate or affect the provisions of any other law, municipal ordinance, regulation, or resolution which is more restrictive concerning advertising than the provisions of said sections 173.13 to 173.231 hereof or the regulations adopted thereunder."

14. Minn. Stat. § 462.352, subd. 5 defines "comprehensive municipal plan" as a "compilation of policy statements, goals, standards, and maps for guiding the physical, social and economic development, both private and public, of the municipality and its environs,...and may include, but is not limited to, the following: statements of policies, goals, standards, a land use plan, a community facilities plan, a transportation plan, and recommendations for plan execution. A comprehensive plan represents the planning agency's recommendations for the further development of the community."

15. Section 601.03(2) of the Harris Zoning Ordinance, defines the term "comprehensive plan" as "...the general plan for land use, transportation, and community facilities prepared and maintained by the Planning Commission."

16. Section 601.30(7) of the Harris Zoning Ordinance, provides in part that "...The Council shall make its findings and order, and forward same in writing to the applicant within 15 days following the date of its decision."

17. The rezoning action by the Harris City Council was not part of a comprehensive plan within the meaning of the Harris Zoning Ordinance, § 601.03 (2), and Minn. Stat. § 462.352, subd. 5 and is not "comprehensive zoning" within the meaning of 23 C.F.R. § 750.708(b).

18. The rezoning decision is "spot zoning" of the type forbidden by the federal regulation(s) deferred to in the applicable Minnesota Statute because it was not undertaken as a part of comprehensive zoning and was done primarily to permit the installation of outdoor advertising structures.

Based on the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the denial of Hoey's advertising sign permit applications be affirmed.

Dated this 1st day of August, 1996

RICHARD C. LUIS
Administrative Law Judge

Reported: Taped (3 tapes).

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

The Minnesota Department of Transportation made several requests for information from the City regarding how the Charbonneau property had been rezoned and had only received the May 9, 1995 Planning Commission meeting minutes before issuing its denial of Hoey's application on October 19. As of that time, Mr. Constant had spoken with Mr. Charbonneau, who stated that he wanted to rezone the property to put up billboards. Based on the information Mr. Constant had received by October 19, the statement by Mr. Charbonneau that he wanted the land rezoned to put up billboards,

and the federal regulations, MNDOT concluded that it did not appear that the property in question was properly rezoned from R-2 to Commercial. The ALJ concludes that this result is appropriate.

Hoey contends that the Charbonneau's property has been properly rezoned for business use, and the proposed signs meet all of the statutory size, lighting, and spacing requirements. Therefore, since there is no other basis for denying the permits, MNDOT must issue the requested permits.

Hoey maintains that the City of Harris is governed by an elected City Council which has the right to make its own zoning decisions, as appropriate, to meet the needs of its local citizens. Hoey maintains that Minn. Stat. § 173.16, subds. 5(1) and (3) indicate a desire by the legislature that local governing bodies should determine local land use.

In support of its position that the Charbonneau parcels were properly rezoned to general business, Hoey points out that all four quadrants of the interstate interchange are zoned for "business" use. In particular, the property in the southeast quadrant of the interchange located immediately to the north of the rezoned property contains a bait and tackle shop and an auto auction facility. In addition, the Charbonneaus have received notice from the City that the owner of the property in the southeast quadrant currently has plans to install a gas station and hotel on his property.

Hoey disagrees with MNDOT that Mr. Charbonneau only had the property rezoned so that he could put up billboards. Hoey contends that the Charbonneaus had thought about commercializing part of their property because of the increased traffic on I-35 due to the opening of the Grand Casino in Hinckley. Mrs. Charbonneau testified that Mr. Charbonneau attended City Council and Planning Commission meetings to determine what type of commercial businesses would be permissible on the property. She testified that erecting billboards was only one of several types of options that were

discussed at the Planning Commission and City Council meetings. This allegation is not supported by the minutes of either body, and it is noted that Mrs. Charbonneau did not actually attend the meetings.

Further information was provided to MNDOT by the City Clerk for the City of Harris in an effort to explain the rezoning of the Charbonneau property from rural residential to general business.

The Administrative Law Judge is unable to conclude that the rezoning of the Charbonneau property from rural residential to general business constitutes action which was part of comprehensive zoning by the City of Harris. He concludes that such action was done primarily to permit the erection of advertising devices in violation of state and federal laws and regulations. The City Council approved the rezoning on May 15, and the Charbonneaus signed the first two permit applications on May 23. This timing suggests that billboards were the primary motivation for the rezoning.

Minnesota Statutes, Chapter 173 states that the state and federal laws and regulations work together to oversee and regulate the erection of billboards in areas adjacent to certain highways. Minn. Stat. § 173.01 provides in part that “[i]t is the intention hereby to comply with the policies declared by Congress in United States Code, title, ‘Highways.’” Minn. Stat. § 173.185, subd. 1 also provides that “[t]he commissioner of transportation shall comply with federal law and federal rules and regulations relating to billboard control on the interstate and primary systems, and is authorized to do all necessary acts and things, including,... entering into binding agreements with the United States...to the end that the objectives stated in United States Code, title 23, section 131, section 319, or any other applicable federal statute, and the rules and regulations... be accomplished on the interstate and primary systems of highways.”

In accordance with Minn. Stat. § 173.185, Minnesota entered into an agreement in 1971 with the federal government in which the state agreed to meet certain minimum requirements of advertising device control adjacent to federal and primary highways in order to carry out national policy relative to the control of outdoor advertising and also to assure the state full participation in federal highway funding. (MNDOT Brief, Attachment A).

While it is true, as Hoey argues, that the local zoning authority does have the power to make determinations as to commercial zoning within its jurisdiction, that zoning must still comply with the requirements of state and federal laws and regulations. Minnesota Statutes, section 173.20 provides that “[n]othing in sections 173.13 to 173.231 shall be construed to abrogate or affect the provisions of any other law, municipal ordinance, regulation, or resolution which is more restrictive concerning advertising than the provisions of said sections 173.13 to 173.231...”

Therefore, even the local zoning control that is authorized under Minn. Stat. § 173.16 subds. 5(1) and (3) is subject to other laws or regulations which are more

restrictive. This includes the federal regulation under 23 C.F.R. § 750.708(b), which sets forth the stricter requirement of “comprehensive zoning” for outdoor advertising control purposes.

While “comprehensive zoning” is not defined in the federal regulation, one can look also to Minn. Stat. Chapter 462 and the Harris Zoning Ordinance for guidance as to its meaning. Under Minn. Stat. § 462.352, subd. 5:

“Comprehensive municipal plan” means a compilation of policy statements, goals, standards, and maps for guiding the physical, social and economic development, both private and public, of the municipality and its environs,...and may include, but is not limited to, the following: statements of policies, goals, standards, a land use plan, a community facilities plan, a transportation plan, and recommendations for plan execution. A comprehensive plan represents the planning agency’s recommendations for the further development of the community.

Minnesota’s municipal planning act does not require that municipalities adopt a comprehensive municipal plan. Minn. Stat. § 462.353, subd. 1. However, in reading the Harris Zoning Ordinance, it appears that the Planning Commission was to prepare and maintain such a plan for the City.

In the Harris Zoning Ordinance, the term “comprehensive plan” is defined as “...the general plan for land use, transportation, and community facilities prepared and maintained by the Planning Commission.” § 601.03(2). In addition, the term comprehensive plan is used and referred to in other parts of the Zoning Ordinance. However, when such a document was requested by MNDOT, no such document was produced.

Both the state statute and the Harris Zoning Ordinance contemplate a written document that evidences policy statements, goals, standards and maps for a land use plan. If such a document has been prepared and maintained by the Planning Commission, it should, at the very least, serve as an advisory guide by the Commission for the development of the city. Amcon Corp. v. City of Eagan, 348 N.W. 2d 66, 74. (Minn. 1984).

Even if a specific written document or set of documents is not maintained by the city as a “comprehensive plan,” one can consider whether evidence exists of the City’s action fitting the concept of comprehensive zoning. In a broader sense, it has been recognized “that zoning should be the result of studied forethought, that the parts of the zoning scheme should relate to the whole, that the zoning ordinance should be free of gross irrationalities, inconsistencies, and discrepancies, that it should not be done piecemeal and that it should take into account the interest of the entire city and its citizens.” 2 Ziegler, Rathkopf’s The Law of Zoning and Planning, p. 12-3, 4th ed. (1992)

In looking to the evidence presented in this case, neither the Planning Commission minutes nor the City Council meeting minutes indicate a discussion of how the rezoning of the Charbonneau property complies with a written or a more general comprehensive plan of the City. There was no evidence in the meeting minutes of either body that there was any discussion regarding goals, policies, standards or maps with regard to the re-zoning decisions.

This matter is similar to Curtis Oil v. City of North Branch, 364 N.W. 2d 880, (Minn. App. 1985), where the court found the record on review did not contain evidence necessary to determine whether there was a rational basis for the city's actions, citing Honn v. City of Coon Rapids, 313 N.W.2d 409, 414 (Minn. 1981).

In Curtis Oil, the City Council denied a rezoning application. No reasons for the denial were included in the Council meeting minutes despite the fact that the zoning ordinance itself required factual findings. Later, the city clerk informed the applicant by letter that the city had denied the applications. The city clerk said the council's decision was based, in part, on the fact that the applicant's proposed change in the business would change the nature of the neighborhood.

The Curtis Oil court stated that it was impossible to determine whether there was a rational basis for the City Council's denial of the rezoning where no reasons for the denial were included in the council's minutes and the documents filed in a later lawsuit also did not contain the evidence necessary to determine whether there was a rational basis for the city council's action. Curtis Oil at 883. In its analysis, the court stated that:

The Supreme Court directed city councils and zoning boards to 'at a minimum, have the reasons for [their] decision recorded or reduced to writing and in more than just a conclusory fashion.' Honn, 313 N.W.2d at 416 (Emphasis added). It added, '[b]y failing to do so [the municipal body] runs the risk of not having its decision sustained.' Id. North Branch did not provide the minimal reasons required by the Supreme Court. By doing so, it chose to run the risk of not having its decision sustained. Any findings made at this late date would merely be rationalization of the council's previous action. Sanctioning any such procedure would be unfair to respondent and 'runs the risk inherent in any opportunity to rationalize or justify what one has done before.' Reserve Mining Co. v. Minnesota Pollution Control Agency, 364 N.W.2d 411 (Minn. Ct. App. 1985) (Citing Honn, 313 N.W.2d at 416).

The court in Curtis Oil concluded that with no reasons and no factual basis, the city's denial of the request to rezone was arbitrary. The decision in Curtis Oil considered not only the meeting minutes of the city council but also reviewed the evidence presented at a later hearing to reach its conclusion, which is consistent with the ruling in Honn.

The court in Honn concluded that not only was evidence presented to the city council at the hearing relevant, but also "new or additional evidence may be received at

the trial, but it must be relevant to the issues that were raised and considered before the municipal body. Witnesses may testify and be cross-examined, but their testimony must be relevant to the issues that were raised and considered below.” Honn, at 416.

In this case, consistent with the Honn decision, the Administrative Law Judge considered evidence that was presented at the administrative hearing in conjunction with the Planning Commission and City Council meeting minutes to determine whether the City made a comprehensive zoning decision with respect to the rezoning of the Charbonneau property.

In this case, the record indicates that the neither the Planning Commission nor the City Council provided a reasoned or factual basis for the rezoning of the Charbonneau’s parcel. The Harris Zoning Ordinance also provides that in the case of applications for the amendments of zoning regulations, including rezoning, the Council shall make findings and an order. § 601.30(7). No such findings were made by the Harris City Council.

The April 25, 1995, Harris Planning Commission meeting minutes state that Larry Charbonneau requested rezoning from R2 to Commercial on the described property. No discussion on the reason for the rezoning was set forth in the minutes.

On May 9, 1995, the Harris Planning Commission conducted a special hearing at which time they granted Larry Charbonneau’s request for rezoning from rural residential to general business on the two small parcels of land. There was no discussion in the minutes as to the reason for the rezoning or what might be built on the property. The minutes only included a legal description of the property to be rezoned.

On May 15, 1995, the Harris City Council approved a motion to rezone the property owned by Larry Charbonneau from rural residential to general business. There were no further comments in the meeting minutes regarding the reason for the rezoning. (Ex. 9).

On May 23, 1995, the Charbonneaus signed the first two advertising device permit applications.

Even though the meeting minutes do not reflect that there was any discussion regarding the rezoning, Mrs. Charbonneau testified that Mr. Charbonneau went to a Harris council meeting to find out if they would be allowed to show automobiles along the freeway on their property and was informed by the City Council that they could commercialize that strip of land.

Mrs. Charbonneau also testified that at the May 9, 1995, meeting, the Planning Commission asked Mr. Charbonneau several questions regarding the property. Along with the idea of putting up billboards, Mr. Charbonneau proposed other uses for the property including selling used automobiles, showing garages that were for sale by one

of his neighbors and opening a flea market. The commission had no problem with any of the ideas presented by Mr. Charbonneau.

For evidence that other uses for the property were discussed, Hoey relies on the February 23, 1996, letter by Bonnie Swanson, the Harris City Clerk. The letter does state that the recent development along interchange is an effort by the City of Harris to include and promote business development for the City of Harris. However, there is no indication that this information was raised or considered during the Planning Commission or City Council meetings. This information is a statement provided by the City Clerk of Harris, not by members of the City Council. When Mr. Constant and Mr. Erickson met on March 7, 1996 with Mr. Christianson, a member of the City Council, regarding the circumstances surrounding the rezoning of the two small parcels, Christianson was not able to provide information regarding a planning process by the City. His statement regarding commercial planning for this area was that "someday the whole area would be rezoned."

The fact that the Planning Commission or the City Council may have discussed what Mr. Charbonneau wanted to put on the small parcels and a statement by the City Clerk that the City is promoting development along the interstate interchange is not enough to constitute comprehensive zoning. Mr. Christianson's statement indicates only his opinion of the Council's future intent and is not sufficient to stand as evidence of the existence of a comprehensive plan. The lack of a through discussion by the Planning Commission and findings by the City Council for its decision lead to the conclusion that the rezoning was not part of comprehensive zoning.

In addition to the issue of whether the rezoning of the parcels was part of a comprehensive plan, a determination also needs to be made that the parcels were rezoned primarily to permit outdoor advertising structures. The Administrative Law Judge is in agreement with MNDOT that the parcels were rezoned primarily for the erection of billboards. The evidence does not provide information to conclude reasonably that any other type of business was going to be established on the property given the size of the property and the setback requirements of the property.

The location of the property next to the freeway, the small size of the property and the long narrow shape of the rezoned parcels is evidence that the primary reason for the rezoning of the property was to accommodate billboards. The rezoned parcel is a long narrow strip of land which totals less than four acres. The land is approximately 98 feet wide at the north end widening to a maximum of 122.4 feet and then narrowing to a point at the south end. The length of the rezoned parcel from north to south is approximately 2500 feet, just long enough to accommodate three billboards pursuant to the 660 foot spacing of billboards as provided in the City Zoning Ordinance.

Furthermore, when Mr. Charbonneau was asked by MNDOT what commercial business he planned to operate on the rezoned area, he indicated that he intended to put billboards on the property. It was only after the explanation by Mr. Constant of the

applicable federal regulation that Mr. Charbonneau mentioned that they might sell used cars or propane fuel on the parcel.

Mr. Constant's investigation concluded that a propane fuel could not be located in a general business district. Used cars could be placed on the property, but they would have to be located around the billboard signs. In making the decision to rezone the property neither the Planning Commission nor the City Council discussed the possibility of having to make other necessary improvements to the property, such as improvements to roads, sewer and water, that would have to be made if the property were to accommodate other businesses properly.

Because of the limited use of this land, MNDOT concluded that the rezoning of the parcel constituted "spot zoning." The Administrative Law Judge agrees with this conclusion. Following is the list of factors that have been considered in making a determination of the reasonableness of the rezoning and whether it constitutes illegal spot zoning:

- (1) Whether the rezoning promotes the community welfare;
- (2) Whether the rezoning is consistent with the comprehensive land use or zoning plan;
- (3) Whether the rezoning is compatible with surrounding uses;
- (4) Whether the rezoning will likely result in substantial harm to neighboring properties;
- (5) Characteristics of the rezoned land, including parcel size, and other factors indicating that any reclassification should have embraced a larger area;
- (6) Availability and suitability of other lands already zoned to allow the uses permitted by the rezoning;
- (7) Discriminatory benefit to the owner of the parcel rezoned; and
- (8) Relevant studies or advice generated by the professional planning staff.

3 Ziegler, Rathkopf's The Law of Zoning and Planning, p. 28-5, 28-5, 4th ed. (1995).

It has already been concluded that the City of Harris did not rezone the two small parcels under any comprehensive plan, either written or unwritten. The failure to comply with at least the spirit of a comprehensive plan suggests that a zoning amendment constitutes spot zoning. 3 Ziegler, Rathkopf's The Law of Zoning and Planning, p. 28-11, 4th ed. (1995).

An assessment of the remaining factors adds to the conclusion that the rezoned parcel is spot zoning. The physical characteristics of the parcel are small, long and narrow enough to accommodate the size of the billboards, but little else. There is a discriminatory benefit to the owner of the parcel in that the size of the land is tailored to encompass the intended use of the erection of billboards. Other lands may be available and suitable to allow other locations for billboards. There is only one frontage road by which the property is accessible and there are no sewer or water hookups for other types of businesses. Finally, there are no relevant studies or advice that was generated by the planning staff and used in the rezoning process.

Even though the rezoning may promote the community welfare, will not likely result in substantial harm to neighboring properties and may be compatible with other properties in the interchange that are zoned general business, these factors are outweighed by the other factors, especially given the lack of a logical, thought-out development plan for the use of the land.

Therefore, MNDOT's conclusion that the City of Harris's zoning action constitutes "spot zoning" is supported by the facts. Although spot zoning of a small parcel of land is not per se invalid, spot zoning for outdoor advertising devices along federal-aid interstate and primary system highways is prohibited under federal statutes and regulations. (23 U.S.C. § 131; 23 C.F.R. § 750.708(b)).

In further support of its position that the outdoor advertising permit applications should be granted, Hoey cites the case of Penn Advertising, Inc. v. Department of Transportation, 608 A.2d 1115 (1992). This case is distinguishable because the Minnesota Outdoor Advertising Control Act, unlike the Pennsylvania Outdoor Control Act, was passed not only to "advance" the federal interests but is required to "comply" with federal law and federal rules and regulations relating to billboard control on the interstate highways. (See Minn. Stat. §§ 173.01, 173.185). Therefore, it is necessary for MNDOT to look to the federal laws, regulations and agreements to interpret the requirements of the Minnesota Act.

Finally, Hoey asserts that MNDOT has not proven that the effect of action by the City of Harris in establishing a business area would result in the loss of federal highway funds under Minn. Stat. § 173.16, subd. 5(3). Therefore, Hoey contends that MNDOT cannot refuse to recognize local commercial zoning unless MNDOT can ascertain with certainty that recognition of the zoning will result in the loss of federal highway funding. The Administrative Law Judge agrees with MNDOT that the narrow interpretation of Minn. Stat. § 173.16, subd. 5(3) suggested by Hoey would have the effect of disregarding the language in Minn. Stat. §§ 173.01, 173.185 and 173.20, which set forth the requirement that Minnesota comply with federal laws and regulations relating to outdoor advertising device control.

Based on the governing statutes and rules, and on the record herein, the Administrative Law Judge concludes that the rezoning of the Charbonneau property by the Harris City Council was not a part of comprehensive zoning and was done primarily for the purpose of erecting billboards. The zoning decision, considered in its whole and in its parts, does not evidence a comprehensive plan. The zoning decision is "spot zoning" of the type forbidden by the federal regulation(s) deferred to in the applicable Minnesota Statutes. Therefore, the Administrative Law Judge recommends that the decision of MNDOT to deny Hoey's application for three advertising device permits be affirmed.

R.C.L.