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Members of the City of Windsor Heights, Board of Adjustment
Sheilah Lizer, Zoning and Building Official
City of Windsor Heights
1145 66th Street, Suite 1
Windsor Heights, Iowa 50324

CC:
Diana Willits, Mayor
Members of the City Council, City of Windsor Heights
Erin Clanton, City Attorney
Matthew Brick, City Attorney

Delivered via email to:
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August 27, 2017

Re: Appeal of Superseding Notices of Violation
– Diane Foss and Michael Miller, 6608 Del Matro Ave., Windsor Height, Iowa 50324
– James and Marijetka Orr, 7218 Del Matro Ave., Windsor Height, Iowa 50324

Dear Members of the Board of Adjustment:

I am writing to you on behalf our clients, Diane Foss and Mike Miller, and James and Marijetka Orr. They hereby appeal the “superseding notice(s) of violation” issued to them on August 21, 2017, and, to the extent necessary for the board to consider this appear, request an administrative hearing.

As an initial matter, the “Superseding Notice of Violation” does not cure the prior violation of my clients’ constitutional rights. To the contrary, it constitutes a further violation, because it seeks to enforce Windsor Heights’s content-discriminatory sign ordinance permitting scheme, which violates the 2015 U.S. Supreme Court case, Reed v. Town of Gilbert, 135 S.Ct. 2218 (2015), against my clients. In brief, the constitutional problem with the ordinance is that it creates exceptions to the permitting requirement which vary based on signs’ content (for example, real estate signs, temporary signs, educational signs, religious signs). Because the violation is based on an unconstitutional ordinance, it should be rescinded and/or this appeal should be granted.

Further, while we appreciate that the City has sought to revoke the prior, clearly impermissible Notice to Abate Nuisance Violation, indicating they were “pulled from the City’s form database and made reference to incorrect code provisions,” we believe the Code itself, email communications we received from the City in response to our open records request, and evidence of selective enforcement all strongly undermine that claim. We believe that our clients’ case is very strong to support a finding of content-based or even viewpoint-based regulation, should litigation become necessary to protect their rights.

Nevertheless, our clients’ goals have always been the public interest, and specifically to protect the First Amendment in Windsor Heights, rather than litigation, if it can be avoided. Having now had a productive conversation with attorneys for the City of Windsor Heights, we will be recommending changes to the City of Windsor Heights sign ordinance to bring it into compliance with Reed’s requirement of content-neutrality. We are optimistic about the potential to engage in a constructive and cooperative process that will conclude with the City Council passing needed amendments to the Code, in addition to training City staff on the due process rights residents have in the nuisance abatement process, which were so clearly violated in our clients’ cases.

Toward that end, we ask that in the meantime, this latest “Superseding Notice of Violation” also be rescinded, and/or this appeal be granted, so that we can all focus on fixing the Code moving forward and work constructively together to do so.

Background about the signs on my clients’ properties is attached.

Thank you for your consideration about this important matter. We have copied the City’s attorneys, and you should consult with them prior to responding to this Appeal. If you have any questions, please have your attorneys contact me directly at (515) 207-0567 and rita.bettis@aclu-ia.org.

Very truly yours,



Rita Bettis
Legal Director