

TOWN OF CEDAREEDGE – PLANNING & ZONING COMMISSION
Regular Meeting
January 5, 2016 at 7:00 p.m.
Cedaredge Civic Center – Grand Mesa Room, 140 NW 2nd ST; Cedaredge, CO
Mission Statement
Town of Cedaredge Planning and Zoning Commission Vision and Mission: To retain the small town character with its natural mesa openness and create positive economic and living opportunities for current and future residents.
Agenda

1) Call to Order

2) Roll Call:

Commission Members:

William Miller	Walt Anderson	Larry Naslund
Terry Jarbo	Karen Helbert	Robert Michael
Vacant	Al Smith, Ex-officio-18	Pat Means, Ex-officio-16

3) Staff Present:

Kathleen Sickles	Jerry Young	Patricia Luna
------------------	-------------	---------------

4) Pledge of Allegiance

5) Approval of Minutes: December 1, 2015 Regular Meeting [A]

6) New Business: None

7) Old Business

a. Town Sign Code Title 16, Chapter 12 [D]

8) Other Business/Comments

9) Reports

a. Town Administrator Kathleen Sickles

i. Delta County Planning

b. Town of Cedaredge by Mayor Means

c. Town Board by Trustee Al Smith

d. Special Presentation(s) None

10) Adjournment [A]

The Board of Trustee members may or may not attend Planning Commission meetings

**RECORD OF PROCEEDINGS
TOWN OF CEDAREdge PLANNING & ZONING COMMISSION
REGULAR MEETING
December 1, 2015**

- 1) **Call to order:** Vice Chairperson Terry Jarbo called the Regular Meeting to order at 7:00 p.m. Members Present: Vice-Chairman Terry Jarbo, William Miller, Larry Naslund, Walt Anderson, Karen Helbert, Trustee Al Smith and Mayor Patricia Means. Members Absent: None. Staff Present: Town Administrator Kathleen Ann Sickles, Public Works Co-Director Jerry Young and Town Clerk Patricia V. Luna.
- 2) **Approval of Minutes of the November 3, 2015 Regular Meeting:** A Motion was made by Mr. Miller and seconded by Mr. Smith to approve the Minutes of the November 3, 2015 Regular Meeting The Motion was then passed unanimously by those members Present.
- 3) **Delta County Planning:** None.
- 4) **Appoint Robert Michael:** A Motion was made by Mr. Miller and seconded by Ms. Helbert to appoint Robert Michael as a Planning Commission member. The Motion was then passed unanimously by those Members present.
- 5) **Review Town Sign Code Title 16, Chapter 12:** Chairman Jarbo asked each member to review the Town's sign code and visit the areas of zoning for discussion at the next meeting. The Planning & Zoning Commission discussed the following at the meeting regarding zoning and sign code references with no decisions being made on this:

Zones and Possible Types of Signage Allowed

- R1 2 Signs; 2X4 or 8 sq. ft., No Illumination
Dates: March 1 – April 7 and October 1 –November 7
- R2 Same as R1
- R3 Same as R1
- MUR 1 Sign, 4X8 or 32 sq. ft., Temporary Sign, Direct Illumination
- B1 Portable Sign – example at Creekside
- MUCD-1 Example at Dollar General, Food Town – Monument Sign
- MUCD-2 Bed & Breakfast – Realtor – Lodge –Monument Sign
- IC

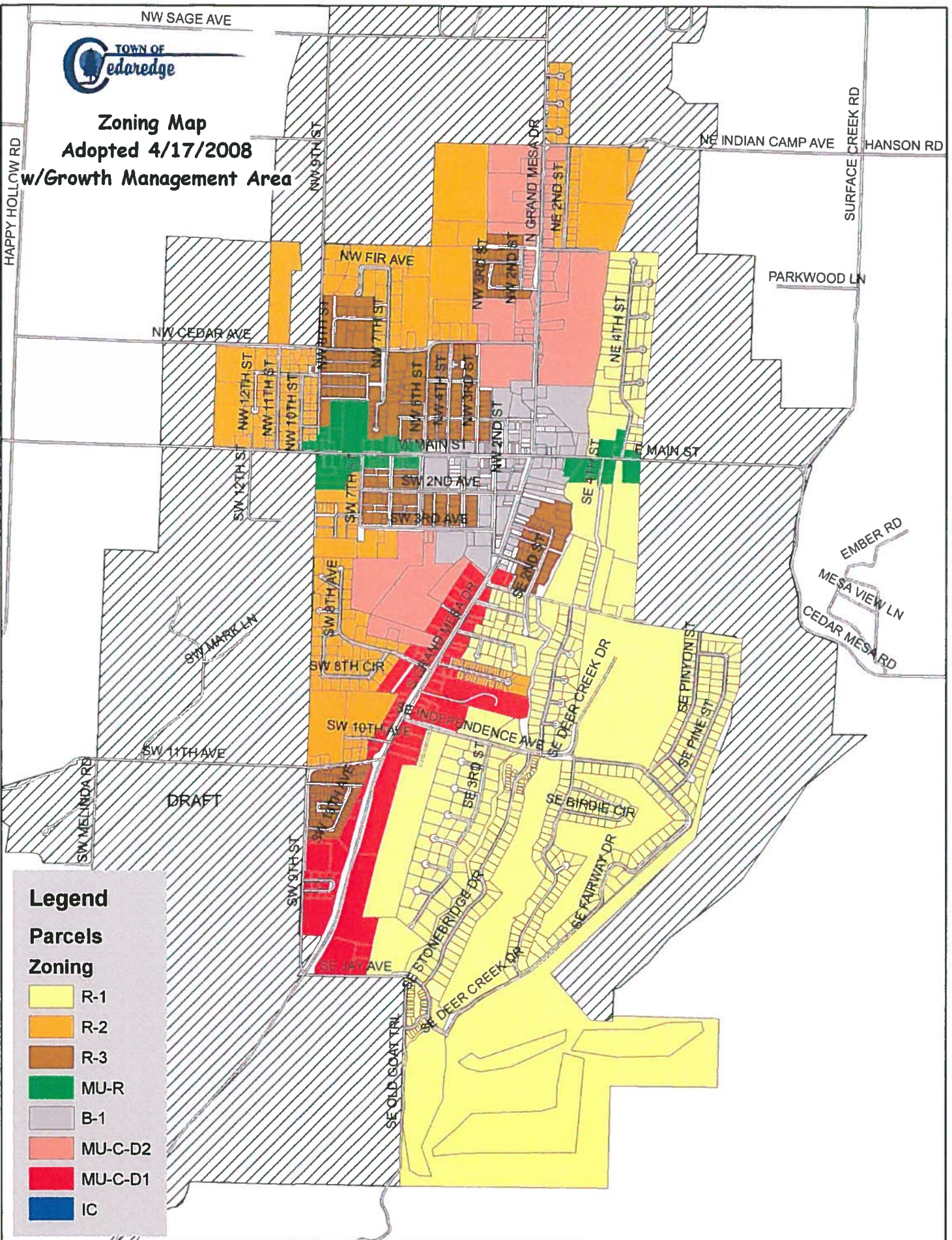
- 6) **Other:** None
- 7) **Adjourn:** The next meeting is scheduled for January 5, 2016. There being no further business Mr. Miller moved to adjourn the meeting and this Motion was then seconded by Mrs. Helbert. The Motion was then passed unanimously. Meeting was adjourned at 7:50 p.m.

Respectfully submitted,

Town Clerk Patricia V. Luna



Zoning Map
Adopted 4/17/2008
w/Growth Management Area



Legend

Parcels

Zoning

- R-1
- R-2
- R-3
- MU-R
- B-1
- MU-C-D2
- MU-C-D1
- IC

restricted district until the provision of water exceeds the needs for one residential unit or equivalent use per one-fourth acre. The Water Restricted District shall be applied to each parcel with the assigned zoning code and remain on the property until the provision of water exceeds the needs for one dwelling unit or equivalent use per ¼ acre. **Editor Notes:** (Ord. 2010-4, 2-18-2010)

16.03.090 Interpretation.

Whenever the requirements of this title are at variance with the requirements of any other lawfully adopted rules, regulations, or ordinances, the more restrictive or that imposing the higher standard, as determined by the Board of Trustees or its appointed representatives, shall govern. **Editor Notes:** (Ord. 2010-4, 2-18-2010)

16.03.100 Relationship to existing ordinances and master plan.

A. All previously enacted ordinances or resolutions or motions of the Board of Trustees of Cedaredge or parts thereof in conflict with this title are to the extent of such conflict hereby superseded and repealed, provided that no such repealer shall repeal the repealer clause of such ordinance, resolution, or motion, nor revive any ordinance, resolution, or motion thereby. The adoption of this title shall not adversely affect Cedaredge’s right to seek remedies for any violation of previous ordinances that occurred while those ordinances were in effect.

B. It is the intention of Cedaredge that this title implements the planning policies adopted in the Cedaredge master plan. While this relationship is reaffirmed, it is the intent of Cedaredge that neither this title nor any amendments to it may be challenged based on any alleged nonconformity with the master plan.

1. Requirement for Master Plan Amendment. Where a development proposal would be in substantial conflict with the master plan, an amendment to the master plan will be required prior to any zoning or subdivision approvals. A substantial conflict will exist when a development proposal would result in changes from the designations of the Zoning Map adopted within this zoning ordinance or the Cedaredge Subdivision Ordinance.

2. Criteria for Evaluating Amendment Proposals. Amendments to the master plan resulting from development proposals under this title shall be evaluated according to the criteria and procedure outlined in the master plan. **Editor Notes:** (Ord. 2010-4, 2-18-2010)

16.03.110 General Information.

The words and terms used, defined, interpreted, or further described may be construed as follows:

A. The particular controls the general.

B. The word “shall” is always mandatory and not directory. The word “may” is permissive.

C. Words used in the present tense include the future unless the context clearly indicates the contrary.

D. Words used in the singular include the plural and words used in the plural include the singular unless the context clearly indicates the contrary.

E. In case of any difference of meaning or implication between the text of these regulations and the caption for each section, the text shall control. **Editor Notes:** (Ord. 2010-4, 2-18-2010)

16.03.115 Definitions.

Editor Notes: Refer to 16.25 of the Cedaredge Municipal Code)

16.03.120 Zoning Districts.

In order to implement the purposes and provisions of this title, the Town establishes the following zoning districts to provide a flexible framework in which a variety of land uses might coexist harmoniously.

A. R-1 Residential District. The R-1 district was established to provide a quiet, low-density area for site-built single-family dwellings.

B. R-2 Residential District. The R-2 district is intended to provide a quiet, medium-density development for site-built and manufactured single-family dwellings.

C. R-3 Residential District. The R-3 district is created to provide an area that is suitable for high-density single-family, duplexes, triplexes, and multifamily dwellings. This district also provides for other uses that are compatible with such uses.

D. MUR-D Mixed-Use Residential District. The MUR-D district was established for mixed-use residential and business uses that are compatible with residential uses. Business architecture should be similar in style and design to the residential neighborhoods. Buffers and/or screens should be implemented to protect the residential uses within the district.

E. B-1 Business District. This district was created to reflect and retain the character of the original downtown.

F. MUC-D2 Mixed-Use Commercial District. The MUC-D2 district was created to support commercial uses that are typically created and located adjacent to increased traffic while adjacent to residential areas.

G. MUC-D1 Mixed-Use Commercial District. The MUC-D1 district is intended to provide an area for a large variety of uses that require large storage and parking areas to conveniently serve customers.

H. IC Industrial Commercial District. The IC industrial commercial district was established to support commerce that is not compatible with residential, downtown business uses, and operational processes that create noise, fumes, or particulate air emissions. Editor Notes: (Ord. 2010-4, 2-18-2010)

PARKING REQUIREMENTS

Use	Required Parking
Single-family dwelling unit and duplex, townhouse	2 spaces per dwelling
Multifamily, apartment, condominium	2 spaces/dwelling unit—plus 1 space for each 4 units
Church, places of assembly, theaters	1 space per 4 seats
Restaurant	1 space per 3 seats
Office	1 space per 300 square feet
Commercial, retail freestanding or in centers with less than 10,000 sq. ft.	1 space per 200 square feet
Commercial, retail in centers with more than 10,000 sq. ft.	1 space per 250 square feet
Industrial	1 space per employee
B-1 Redevelopment of the downtown business district area.	Parking requirements can be reduced or waived in the event the applicant has justified that adequate customer and employee parking can be obtained by public parking, pedestrian access or operational schedules. Approval for reduced or waived parking is not a right to public parking.

SETBACK REQUIREMENTS

Lot Description	Minimum Setback from Lot Line
-----------------	-------------------------------

All lots adjacent to local residential streets (front)	20 feet
All lots adjacent to county roads or state highways	25 feet
Interior lot line side or rear yard	5 feet
Rear yard adjacent to an alley	5 feet
Interior nonresidential lot lines, condominiums, townhouses, and other attached living units	No setback (construction must meet building code for fire walls, and so on)
Ridgelines	When a ridgeline is identified by the Town on the plat, the roof of structure shall be ten (10) feet below the highest point of the ridgeline on the lot, or be set back from the ridgeline where possible.

BUILDING HEIGHT MAXIMUM REQUIREMENTS

Nonresidential structures	36 feet
Residential structures	30 feet

MINIMUM LOT SIZE

Zoning District	Lot Use	Minimum Lot Size	Residential Density
R-1	Detached single-family dwelling unit (DU)	9,000 sq. ft/DU	4 or fewer DU/net acre
R-2	Detached single-family dwelling unit (DU)	7,000 sq. ft/DU	6 or fewer DU/net acre
R-3	Detached single-family dwelling unit (DU)	5,000 sq. ft/DU	8 or fewer DU/net acre
	Duplex, triplex	4,000 sq. ft/DU	10 or fewer DU/net acre
	Townhouse	3,500 sq. ft/DU	12 or fewer DU/net acre
	Apartment buildings, condominiums, mobile home subdivisions	3,500 sq. ft/DU	12 or fewer DU/net acre
All Other	Nonresidential land uses	No minimum lot size	N/A

R-1. The R-1 district is intended to provide a quiet, low-density development for site built single-family

dwellings. Low density is considered four dwelling units or fewer per net acre with a minimum lot area of

nine thousand (9,000) square feet per dwelling unit. Duplex shall have a minimum lot area of four thousand (4,000) square feet per dwelling unit and townhouses/condominiums shall have a minimum of three thousand five hundred (3,500) square feet per dwelling unit.

Principle uses:

1. Accessory buildings;
2. Existing golf course;
3. Home occupation no-impact;
4. Homeowner's association (HOA) buildings;
5. Public and Private schools established prior to January 1, 2008
6. Recreation facilities owned and operated by an HOA;
7. Single-family detached dwelling;
8. Storage owned and operated by an HOA.

Conditional uses requiring a CUP:

1. Accessory dwellings;
2. Alcoholic beverage uses other than bar or tavern
3. Apartment single;
4. Church or place of worship;
5. Condominium;
6. Duplexes;
7. New golf course;
8. Patio homes;
9. Property development building;
10. Public and private schools;
11. Townhouses.

R-2. The R-2 district is intended to provide a quiet, medium-density development for site-built and factory-built single-family dwellings. Medium density is considered six (6) dwelling units per net acre with a minimum lot area of seven thousand (7,000) square feet per dwelling unit. Duplexes and triplexes shall have a minimum lot area of four thousand (4,000) square feet per dwelling unit and multifamily dwellings shall have a minimum of three thousand five hundred (3,500) square feet per dwelling unit.

Principal uses:

1. All principal uses within the R-1 district;
2. Child care homes;
3. Home occupation restricted;
4. Manufactured homes;
5. Patio homes;
6. Agricultural activity on one acre or more that does not require a waiver or public review;
7. Livestock as defined in agricultural activity two-year term or less with livestock waiver.

Conditional uses requiring a CUP:

1. All conditional uses within the R-1 district;
2. Triplexes;
3. Livestock as defined in agricultural activity greater than two years.

R-3. The R-3 residential district is intended to provide an area that is suitable for high-density single-family, duplexes, triplexes, and multifamily dwellings. This district provides for other uses that are compatible with such uses. High density is considered ten (10) dwelling units per net acre with a minimum lot area of five thousand (5,000) square feet per dwelling unit. Duplex, triplex, and multiple-family dwellings shall have a minimum lot area as described in the R-2 zoning district.

Principle uses:

1. All principle uses within the R-1 and R-2;
2. Bed and breakfast;
3. Cottage industry;
4. Duplexes/triplexes;
5. Multifamily dwellings;
6. Patio homes;
7. Studios.

Conditional uses requiring a CUP:

1. All conditional uses within the R-1 and R-2 districts;
2. Basic adult day care;
3. Group homes for the aged;
4. Mobile homes;
5. Mobile home park.

MU-R. The MU-R mixed-use residential district is intended for mixed-use residential and business uses that are compatible with residential uses. Business architecture shall be similar in style and design to the residential neighborhoods. Buffers and/or screens shall be implemented to protect the residential uses within the district. Minimum lot area shall be the same as the R-3 zoning district.

Principal uses:

1. All principal uses within the R-1, R-2, and R-3 districts;
2. Bed and breakfasts;
3. Community facility less than ten thousand (10,000) square feet;
4. Duplexes/triplexes;
5. Galleries;
6. Limited indoor recreation facilities;
7. Lodging establishments;

8. Medical and dental offices;
9. Multifamily dwellings;
10. Property development building;
11. Restaurants;
12. Specialty stores.

Conditional uses requiring a CUP:

1. All conditional uses within the R-1, R-2, and R-3 districts;
2. Child care centers;
3. Group home for the aged;
4. Limited outdoor recreation;
5. Long-term care facilities;
6. Plant nurseries and greenhouses;
7. Professional office/centers;
8. Skilled craftsman business.

B-1. The B-1 business district is intended to reflect and retain the character of the original downtown. No minimum lot area is established.

Principal uses:

1. Alcoholic beverage uses
2. Bed and breakfast cottage industry;
3. Cottage industry;
4. Entertainment facilities;
5. Financial services;
6. Galleries;
7. Limited indoor recreation;
8. Medical and dental offices;
9. Museums;

- 10. Open air farmers' market;
- 11. Parking lots as principal uses;
- 12. Personal and business shops;
- 13. Professional offices/centers;
- 14. Public utility facility/infrastructure business office with no repair or storage facilities;
- 15. Restaurants, coffee, cafes with no drive-through;
- 16. Retail establishments;
- 17. Skilled craftsman business;
- 18. Specialty store;
- 19. Studios;
- 20. Tourist information facilities.
- 21. Residential use by right

- 1. Home occupation, no impact
- 2. Home occupation, restricted

Conditional uses requiring a CUP:

- 1. Apartment single;
- 2. Bars and taverns;
- 3. Church or place of worship;
- 4. Clubs and lodges;
- 5. Community facility;
- 6. Entertainment facilities;
- 7. Public and private schools;
- 8. Public utility facilities/infrastructure business office and/or repair and storage area;
- 9. Recreational vehicle park;
- 10. Restaurant, drive-through;

- 11. Workshops and custom small industry uses;
- 12. Unlisted uses.

MUC-D2. The MUC-D2 mixed-use commercial district is intended to support commercial businesses that are typically created and located adjacent to increased traffic while adjacent to residential areas. No minimum lot area is established.

Principal uses:

- 1. Basic adult care;
- 2. Community facilities;
- 3. Entertainment facilities;
- 4. Galleries;
- 5. Group homes for the aged;
- 6. Light industry truck parking;
- 7. Limited outdoor recreation;
- 8. Medical and dental clinics;
- 9. Multifamily dwellings;
- 10. Museums;
- 11. Open air farmers' market;
- 12. Parking lots as principle use;
- 13. Personal and business shops;
- 14. Professional offices/centers;
- 15. Public and Private schools established prior to January 1, 2008
- 16. Public utility facilities/infrastructure business office and/or repair and storage area;
- 17. Restaurants;
- 18. Skilled craftsman buildings;
- 19. Studios;
- 20. Tourist information facilities;

21. Agricultural activity on one acre or more that does not require a waiver or public review;

22. Livestock as defined in agricultural activity two-year term or less with livestock waiver.

23. Residential use by right

1. Home occupation, no impact

2. Home occupation, restricted

Conditional uses requiring a CUP:

1. Agricultural activities;

2. Bars and taverns;

3. Child care centers;

4. Churches or places of worship;

5. Convenience shopping, including the sale of gasoline;

6. Health and membership clubs;

7. Public and private schools;

8. Recreational vehicle parks;

9. Restaurants, drive-through(s);

10. Livestock as defined in agricultural activity greater than two years;

11. Unlisted uses.

MUC-D1. The MUC-D1 mixed-use commercial district is intended for a large variety of uses that require large storage and parking areas to conveniently serve customers. No minimum lot area is established.

Principal uses:

1. Child care centers;

2. Community facilities;

3. Convenience shopping, including the sale of gasoline;

4. Department stores;

5. Financial services;

6. Galleries;

7. Health and membership clubs;

8. Indoor recreation;

9. Lodging establishments;

10. Long-term care facilities;

11. Public and Private schools established prior to January 1, 2008

12. Restaurants;

13. Specialty stores;

14. Studios;

15. Supermarkets;

16. Vehicle sales.

17. Residential use by right

1. Home occupation, no impact

2. Home occupation, restricted

18. Medical and dental clinics,

19. Personal and business shops,

20. Professional offices/centers

Conditional uses requiring a CUP:

1. Agricultural activities;

2. Bars and taverns;

3. Boarding and training kennels;

4. Churches or place of worship;

5. Gasoline stations;
6. Limited outdoor recreation;
7. Medical Marijuana Dispensary;
8. Multiple storage units;
9. Public and private schools;
10. Public utility facilities/infrastructure business office and/or repair and storage area;
11. Recreation vehicle parks;
12. Restaurants with drive-through(s);
13. Vehicle service/repair;
14. Veterinary offices;
15. Unlisted use.

1. Adult-oriented use;
2. Heavy industrial;
3. Heavy industrial truck parking;
4. Salvage yards;
5. Unlisted uses.

(Ord. 2010-4, 2-18-2010)

16.03.130 Overlay districts.

Two overlay districts were created to designate particular areas of concern for the present and future residences of the Town.

A. Green Space. Green space overlay district is designated to include parks, trails, recreation areas, cemetery, and/or natural conservation areas to be preserved, creeks and drainages, golf courses fairways/grounds, and similar type land uses. Both public and privately owned property may be placed in this overlay district. The purpose of this overlay district is to create an area where property that is naturally sensitive and an attribute to the Town may be placed to create the high-quality living experience we all desire.

B. WR. The WR water-restricted district is intended as an overlay density district for all annexed properties after January 1, 2008. The water-restricted district shall be applied to each parcel with the assigned zoning code and remain on the property until the provision of water exceeds the needs for one dwelling unit or equivalent use per one-fourth acre.

The WR water-restricted district is intended as an overlay density district for all annexed properties after January 1, 2008. The water-restricted density shall be one of the following:

1. WR-1-40: one dwelling or equivalent water use per forty (40) acres;
2. WR-1-30: one dwelling or equivalent water use per thirty (30) acres;
3. WR-1-20: one dwelling or equivalent water use per twenty (20) acres;

IC. The IC industrial commercial district is intended to support commerce that is not compatible with residential, downtown business uses, and operational processes that create noise, fumes, or particulate air emissions. No minimum lot area is established.

Principal uses:

1. Boarding and training kennels;
2. Light industrial;
3. Light industry truck parking;
4. Manufacturing/industry;
5. Public utility facilities/infrastructure business office and/or repair and storage area;
6. Vehicle services/repair;
7. Veterinary offices;
8. Workshops and custom shops.

Conditional uses requiring a CUP:

4. WR-1-10: one dwelling or equivalent water use per ten (10) acres;

5. WR-1-05: one dwelling or equivalent water use per five (5) acres;

6. WR-1-01: one dwelling or equivalent water use per one (1) acre;

7. WR-1-00: one dwelling or equivalent water use per one-fourth acre;

8. Annexation. The applicant of property outside of the Town shall state the proposed zoning and select the proposed water-restricted density at the time of the request for annexation. (Ord. 2010-4, 2-18-2010)

16.03.140 Incorporation of Zoning District Map.

The location and boundaries of the zoning district established by this title are shown on the "Zoning District Map of the Town of Cedaredge," which has been initially adopted along with this title and is hereby incorporated by reference into this title. Said Zoning Map together with all information contained thereon and all amendments thereto are by reference made a part of this title. Said Map shall be identified by signature of the Mayor, attested by the Town Clerk, and bear the seal of the Town and the date of adoption. Changes in the boundary of any zoning district shall promptly be entered onto the Map with an entry stating the number of the amending ordinance and effective date. Said Map shall be located in the office of the Town Clerk. (Ord. 2010-4, 2-18-2010)

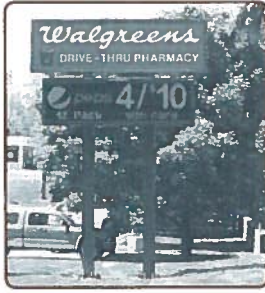
NEW RULES FOR YOUR SIGN CODE

By Gerald Dahl, Murray Dahl Kuechenmeister & Renaud LLP attorney, and Martin Landers, AICP, Plan Tools LLC principal

SIGN CODES ARE TRICKY. THEY HOST A variety of sign types with no common nomenclature — is that a ground sign, freestanding sign, monument sign, or all of the above? Sign codes require frequent updates as sign technology keeps evolving at all levels, from the temporary wave banners popping up in landscape buffers to recent innovations in electronic message centers.



Wave Banners



Electronic Message Center on a Freestanding Sign

Variations often are requested for greater sign height and more sign area. Actively enforcing the sign code also can strain relationships with the business community, especially when temporary signs are involved. With so many potential points of conflict, it is no surprise when the legal basis for sign codes is tested.

New Rules of the Game: *Reed v. Town of Gilbert*

The ground rules for sign codes are changing once again as a result of *Reed v. Town of Gilbert, AZ*, a rare unanimous Supreme Court decision. In June of this year, the Court considered a challenge to certain portions of the Gilbert, Arizona, sign code, and in so doing, announced a sweeping new standard for the requirement that such regulations be “content neutral.” Despite an effort by Justice Samuel Alito in a concurring opinion to interpret the majority opinion somewhat less broadly, the effect of the decision, written by Justice Clarence Thomas, will likely be that key features of most local sign codes will now be considered “facially content-based” and thus subject to strict constitutional scrutiny — a high bar that few are likely to clear.

The Gilbert sign code contained a series of exemptions, including three that became the basis for appeal and the Supreme Court decision: “ideological signs,” defined as “communicating a message or idea;” “political signs” “designed to influence the outcome of an election;” and “temporary directional signs,” directing the public to a church or other “qualifying event.” Each category of sign carried with it a different set of requirements on size and duration.

The plaintiff, Clyde Reed, was the pastor of a church without a permanent location. The church posted signs advertising the location and time for the next day’s services. The Town cited the church for failing to include an event date and for exceeding the time limits for display of this type of (temporary directional) sign. The Town prevailed through the Ninth Circuit Court of Appeals, but the Supreme Court reversed, holding the Town’s requirements content-based on their face, and because of this, unconstitutional under the First Amendment — prohibiting the enactment of laws “abridging the freedom of speech.”

Enforcement of the Gilbert regulations depended upon the content of the sign, and the court held such regulations may be justified only if the town could prove they were narrowly tailored to serve a “compelling state interest.” In practice, this is a very high standard, and the court held the regulations did not measure up.

A content-based regulation, as applied to a sign code, means that if you have to read the sign to determine how it is regulated, it is content-based. Many sign codes, including the Gilbert sign code, do exactly that by referring to the sign’s content (political, ideological, special event), then applying differing restrictions based on those categories. After reviewing prior case law, Justice Thomas held the code could only survive if it passed the two-part “strict scrutiny” test: (1) the regulations must be narrowly tailored (2) to achieve a compelling governmental interest. Here, the code addressed visual clutter and pedestrian and traffic safety as the governmental interests, but were not narrowly tailored — for example, the court reasonably asked why political signs were permitted to be larger and temporary directional signs smaller, as not really serving the governmental interest in reducing clutter.

Justice Elena Kagan, in a spirited concurring opinion (agreeing with the result but not the broad scope of Justice Thomas’ opinion) warned that the effect of the decision would be to unnecessarily invalidate countless ordinances across the country. She argued that the court easily could have voided the Gilbert regulations on more narrow grounds, saying that the Gilbert ordinance did not pass “the laugh test,” let alone strict scrutiny.

Nevertheless, the majority opinion in *Reed v. Town of Gilbert* is now controlling law on the subject of content-based local sign regulations, and, until modified or conditioned by later decisions, it must be followed.

Keys to creating a Reed-compliant sign code

Tip No. 1: Focus on type, not message

Perhaps the most important lesson of the *Reed* decision is to cast a critical eye on how sign types are named and regulated. Here is a short list of sign type names that are “in” or “out” (not

because of their physical structure per se, but instead whether or not the enforcing official must read their content to know how they are regulated):

Out

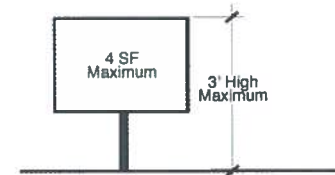
- construction signs
- political and ideological signs
- real estate signs
- special event banners

In

- site signs
- yard signs
- yard signs and swing signs
- banners

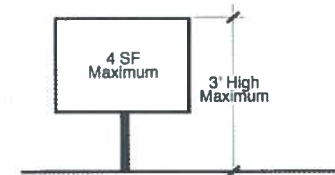
The structure of a sign code can go a long way toward expressing clarity in content-neutral sign types and regulations. Employ charts to categorize permissible sign types by residential or non-residential zoning district, and incorporate graphic illustrations to depict sign types and their standards.

This



Yard Sign

Not this



Political Sign

Tip No. 2: Craft a compelling purpose statement

Courts are required to give deference to the legislative intent of the elected officials in enacting local regulations. Accordingly, it is important to take the opportunity to better articulate the compelling governmental interests underlying the local sign code. Taking some cues from the *Reed* decision, enhance the purpose section of the code by going beyond a simple statement of “promoting public health and safety.” Instead, emphasize:

- promoting safety of persons and property by regulating signs so as not to confuse or distract motorists or impair drivers’ ability to see pedestrians, obstacles, other vehicles, or traffic directional signs
- promoting efficient communication of messages
- promoting the public welfare by reducing visual clutter

- assisting in wayfinding
- providing fair and consistent enforcement.

Tip No. 3: Scrub definitions to reduce/eliminate content-based references

After creating a series of content-neutral sign types in the regulation, as suggested above, make sure that those types are described in content-neutral terms. The lens is always, “Do I have to read the sign to determine what the restrictions are?” If so, the definition fails the content-neutrality test. Here is an example of a content-based definition that has been scrubbed:

Sign, external use, means a sign located outside of a principal commercial use on accessory commercial structures ~~that provides information to customers in motor vehicles about the products or services available on that premises.~~

Tip No. 4: Structure exemptions to avoid content-based distinctions

Every sign code can and should legitimately contain a list of signs exempt from some or all of its requirements. The Town of Gilbert exempted sign types (political, ideological, temporary directional) by describing what the signs actually said or contained — a classic content-based distinction and thus easy for the Supreme Court to invalidate. In describing the list of exemptions in a *Reed*-compliant sign code, stay with the sign type:

- signs erected by the municipality
- flags
- signs being carried by people
- window signs
- wave banners

Notice these exemptions do not require the sign to be read to be placed in the exempt category. If the jurisdiction has taken the first tip (rely on sign type) seriously, it will be easy to create exemptions based on these types and stay well clear of the need to rely on content.

Finally, Justice Thomas identifies two content-based sign types that might survive even the strict *Reed* test: warning signs on private property, signs directing traffic, and private house street number signs.

Despite the apparent inflexibility of Justice Thomas’ majority opinion, Justice Alito, in a short concurring opinion, took a crack at “some rules that would not be content based”:

- Rules regulating the size of signs and the locations in which signs may be placed. These rules may distinguish between free-standing signs and those attached to buildings.
- Rules distinguishing between lighted and unlighted signs.
- Rules distinguishing between signs with fixed messages and electronic signs with messages that change.
- Rules that distinguish between the placement of signs on private and public property.

- Rules distinguishing between the placement of signs on commercial and residential property.
- Rules distinguishing between on-premises and off-premises signs.
- Rules restricting the total number of signs allowed per mile of roadway.
- Rules imposing time restrictions on signs advertising a one-time event. Rules of this nature do not discriminate based on topic or subject and are akin to rules restricting the times within which oral speech or music is allowed.
- In addition to regulating signs put up by private actors, government entities may also erect their own signs consistent with the principles that allow governmental speech. They may put up all manner of signs to promote safety, as well as directional signs and signs pointing out historic sites and scenic spots.

It is important to note that in this list Justice Alito goes beyond the limits of Justice Thomas’ majority opinion in identifying as permissible signs advertising a one-time event (the actual case in *Gilbert*) and signs pointing out historic sites and scenic spots. Neither of these two sign types can be inferred from Justice Thomas’ majority opinion.

Difficult issues not neatly addressed in *Reed*

Two particular types of signs are not addressed in the *Reed* decision, but are of great importance to any local jurisdiction: off-premise signs, including billboards, and murals or works of art. Most troublesome are off-premise signs. The only way to determine if a sign relates to the premise on which it is located is to read it, and many localities ban or highly restrict such signs. We believe that there are only two ways to address this: continue to regulate off-premise signs, but emphasize the importance of the community’s interest in reducing visual clutter, or treat such signs as simply a sign on the land where it is located.

Murals and works of art are a lesser problem. One way to approach this is to define them and state they are exempt. From a litigation perspective, it is much less likely that this approach, which may or may not be content-based, will in practice cause real problems.

Looking ahead

Over time, lower courts will attempt to clarify the majority and concurring opinions of Justice Thomas and Justice Alito. There is no perfect solution, and some communities may decide to error on the side of Justice Alito and live with certain content-based code provisions. Codes are living documents, so the prudent approach may be to resolve to update your sign code consistent with basic *Reed v. Town of Gilbert* content-neutrality guidance and remain nimble for future decrees.

Visit www.cml.org/reed-article for the full article.

ADVOCACY FOR LOCAL GOVERNMENTS AT THE SUPREME COURT

By Lisa Soronen, State & Local Legal Center executive director

SINCE 1983, THE STATE & LOCAL LEGAL Center (SLLC) has filed *amicus curiae* briefs to the United States Supreme Court on behalf of the “Big Seven” national organizations representing the interests of state and local government (the National Governors Association, National Conference of State Legislatures, Council of State Governments, National League of Cities, U.S. Conference of Mayors, National Association of Counties, and International City/County Management Association). The International Municipal Lawyers Association and the Government Finance Officers Association also belong to the SLLC.

State leagues participate in the SLLC through the National League of Cities. Many state leagues also contribute financially on an annual basis to support the SLLC. CML is a proud dues-paying member — “With so many cases coming before the U.S. Supreme Court involving the interests of municipalities, the SLLC is crucial with its excellent *amicus* work,” stated Sam Mamet, CML executive director. In 2014, the Arkansas Municipal League (AML) defended a high-speed police chase case before the Supreme Court, and the SLLC filed an *amicus* brief supporting the AML.

The SLLC files an *amicus* brief in a Supreme Court case in which three of the seven members of the SLLC want a brief written and two organizations do not veto participation. Each SLLC member decides whether to sign onto an SLLC brief after reviewing its contents.

To date, the SLLC has filed more than 300 Supreme Court briefs. The SLLC generally files briefs in cases involving federalism and preemption and in other cases where the interests of state and local government are at stake. It is not unusual for the court to cite or quote an SLLC brief in an opinion or discuss a SLLC brief at oral argument.

The SLLC offers moot courts to attorneys arguing state and local government cases before the Supreme Court. Each year, the SLLC offers Supreme Court review, preview, and midterm webinars and articles focusing on cases from the term affecting state and local government. Lisa Soronen, executive director of the SLLC, serves as a resource to the Big Seven on the Supreme Court and writes about Supreme Court cases affecting cities and towns on the NLC blog, the *Weekly*, and the *Federal Advocacy Update*.

To learn more about the SLLC and to read the briefs the SLLC has recently filed, visit www.statelocalc.org. Follow the SLLC on Twitter for up-to-date information on Supreme Court grants and decisions affecting state government at www.twitter.com/sllcscotus.