

Local Land Use Laws

Why should a small business owner care?

While we expect massive development projects—like downtown condos, upscale projects along the Spokane River, or a proposed Wal-Mart on the South Hill—to be regulated by local government agencies, the small business owner may also surprisingly find her/himself subject to local land use laws and regulations. For instance, what if a business wants to alter the store parking lot by adding landscaping or reconfiguring the painted parking spaces? Or a business simply needs to expand by a few hundred square feet? Or wants a new sign? Could minor projects like these trigger government oversight? The not so obvious answer to all of these questions: Yes, and in ways you might not imagine.



For one of my clients, business was booming and he just needed a few hundred square feet added to an existing building—a relatively modest amount of additional commercial space. However, he couldn't expand on his current parcel because it would encroach into the setback area. We couldn't obtain a variance from the setback requirements because our failure to comply was not topographical; it was self-imposed by the expansion. Luckily, the business owner had long ago anticipated expansion and obtained a right of first refusal to buy the property next door. He was in the process of closing on that purchase and was preparing to build when

he contacted me. He also had blueprints designed for the newly expanded building, as well as parking facilities connecting to the existing building and partially occupying the adjacent parcel.

However, when the contractor hired to do the minor expansion went to pull the building permit, the local government agency would not issue the permit. Why? The building was located on commercially zoned land, but the adjacent parcel was not zoned for commercial development. Until we obtained a rezone of the adjacent parcel, the local building department would not issue the permit. After two public hearings and spending several thousand

dollars in surveying and legal fees, we obtained a commercial rezone. We then had to consolidate the two parcels into one legal parcel, because the local government would not allow a single structure to occupy two different parcels. Eventually, the building was completed and the business successfully expanded into its new space, but not without some substantial and unforeseen challenges.


Signage is another issue that needs to cooperate with land use laws. Changing or altering a commercial business sign is not always easy, because they are regulated in nearly every local jurisdiction. Despite initially complying with the local regula-

By Michelle R. Fulgham

tions, I recall one sign dispute that resulted in litigation. By the time I got involved in the case, the city had approved a commercial business's sign request and issued a sign permit. However, when the sign was actually constructed and erected, it differed from the sign described in the permit and did not comply with the CC&R's (Covenants, Conditions and Restrictions) for the commercial subdivision in which the business operated. Apparently, no one at the business or the city had checked the CC&R's before requesting or approving the new sign. After demand letters were ignored, a lawsuit was filed to enforce the sign restrictions—as set out in the commercial development's covenants, and as set out in the city's permit. A settlement was eventually reached and the improper sign was removed. I don't know the exact cost of the offending sign, but it could've easily been several thousand dollars.

Another land use issue is when businesses want to incorporate fountains and ponds as landscaping attractions. Several local businesses have altered their landscaping to attractively incorporate water features; however, two problems have arisen in cases I've worked on. First, the new landscaping reduced the number of parking spaces required for the square footage of the business. Cities have different requirements, but generally a minimum number of parking spaces is required per square foot of the business premises. If you decrease the number of spaces, while maintaining the same square footage of business premises, then you'll be out of compliance and in violation of the local ordinance. In one instance, we resolved this disparity by obtaining additional parking space rights from an adjacent business with different hours that did not need the additional spaces given their square footage.

The second problem arose not so much with the proposed landscaping, but because the area was subject to a municipal sewer easement. The municipality would not allow anything within its easement that would interfere with its ability to access that sewer easement for construction or maintenance. Therefore, although my client owned the land, he could not put in the landscaping he originally envisioned. No actual sewer line existed in the easement area, but we had to work with the city and receive their approval for the landscaping within the easement area. My client scaled back the plant design to allow the city better access to its easement, and also avoid the risk and expense of the landscaping being damaged if sewer lines were ever installed.

While most small business owners or managers will only take on relatively minor land use development projects, this doesn't mean the project will escape the purview or impact of local government land use regulations. Building expansions, landscaping changes, parking reconfiguration, and signs are just a few items commonly subject to regulatory review and possibly litigation. In order to avoid the surprise, expense, and delay of being found in violation by a government agency or court, a business owner or manager will want to investigate potential land use implications before proceeding with their project—no matter how minor or straightforward the project appears. 

Michelle Fulgham is a principal in the Spokane and Coeur d'Alene offices of Lukins & Annis, P.S. She practices in the areas of land use litigation, real estate disputes, employment law, and general commercial litigation.



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