

Mindsight denied permit for sign again



Doug Varner with Mindsight

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Indiana Borough's Code and Zoning Department on Friday denied the most recent permit application from Mindsight to display its electronic message panels on the sides of the building at 700 Philadelphia St.

And borough manager Ken Gabler said the borough will stick to a deadline ultimatum issued to Mindsight a few weeks ago: The message panels needed to be removed by the end of the day Friday.

But despite the denial and the threat of \$500-a-day fines for ignoring the deadline, Doug Varner, Mindsight's active business partner, said the deactivated electronic signs will stay where they are while he appeals the decision.

Varner said that after he was informed of the decision, he asked Gabler if the signs had to be removed Friday. He said Gabler told him, ``The order stands."

Gabler said the permit application was denied because of a number of issues, including that the Mindsight panels were used for ``off-premise advertising," or advertising businesses not located in the building at 700 Philadelphia St. where the signs are located. The permit was also denied because the Mindsight panels have the potential for animation and illumination that could cause distractions for drivers, Gabler said.

Varner's options, according to Gabler, include appealing the denial to the Zoning Hearing Board, a step that will cost Mindsight \$300. And, partly because of requirements to advertise ZHB hearings, a hearing likely would not be convened for more than a week.

``I am confident that I am in the right ... and based on that confidence, I am choosing not to remove the signs - at least pending the Zoning Hearing Board's decision," Varner said.

Taking the signs down, repairing the mounting holes in the building and then putting the signs back up if the ZHB rules in his favor would cost him a couple thousand dollars, Varner said.

Mindsight's message panels are not the only electronic signs in use in the borough. Two blocks away, the First Commonwealth Message Center at the corner of Philadelphia and Ninth streets advertises banking products - and displays news and sports headlines and weather forecasts - with a rolling scroll, even though the bank does not have a physical presence in the building where the sign is located.

Gabler was not working for Indiana Borough when that electronic message center was installed.

``It was reviewed by borough council. I'm not saying that was the appropriate venue for that," Gabler said.

``I don't consider it relevant" that the First Commonwealth Message Center is running but Mindsight's application for a permit for its electronic signs was denied, Gabler said. That, he said, is like a motorist who is stopped for speeding arguing with the traffic cop that other drivers around him were speeding, too. It doesn't change the fact that the apprehended driver was breaking the law, he said.

Friday's denial of the permit application came after several days of in-house consultations between borough officials and their solicitor, and was another setback for Mindsight in a nearly 30-month legal dispute to keep the message panels displayed in the borough.

Mindsight owns and operates the network of six electronic message boards in Indiana and White Township. Varner said Mindsight sells 5-second advertising messages on the panels, and a sponsor's message can have more than 10,000 exposures per day on the six screens, which also frequently display public service announcements for nonprofit organizations.

Shortly after the panels were installed in October 2006 on the north and east sides of the building at 700 Philadelphia St., Varner was informed by the borough's Code and Zoning Department that he didn't have the necessary permits to install the signs there.

He was later told by David Kirk, director of the Code and Zoning Department, that the message panels violate the borough's sign ordinance because they are regarded as animated signs, because there is already a 700 Shop sign on each side of the building facing a street and because the message panels essentially are commercial billboards - advertising businesses other than the one where the sign is located - and that is not a permitted use in a C-1 commercial zone.

Varner argued that the borough erred in its instructions on installing the signs. He said he did what he was told he had to do to put the signs up and contends he has complied with all the borough's requests since then. He said he can't just simply move the message panels to another location because advertising contracts were signed on the condition that two of the panels in the network will be located at the busy downtown Indiana intersection.

The borough's Zoning Hearing Board, the Indiana County Court of Common Pleas and Commonwealth Court previously ruled in favor of the Code and Zoning Department in the dispute. But borough officials granted Varner a reprieve and told him the message panels could remain in place while the Indiana Borough Planning Commission discussed a possible new sign ordinance.

In January, five months after the latest court decision against Mindsight, it appeared to borough officials that no action on a new sign ordinance was likely at any time soon, so Varner was instructed to turn off the signs immediately and remove them by March 6 or face fines.

Varner shut the signs off, then rented space in the building at 700 Philadelphia St. and moved Mindsight's office there. He then applied for a new sign permit based on the fact that the business is physically located in the building where the message panels are located.

At Tuesday's borough council meeting, Varner expressed frustration that a ruling on his new application was taking so long, and that it was running up against the March 6 deadline.

Varner said previously there are 450,000 billboards in America, but only about 700 of them are electronic and capable of having their advertising messages - or public warnings - quickly changed.

Mindsight's message panels, Varner said, should be regarded as a cutting-edge technological advantage for Indiana.

Planning commission members said earlier this year they have not brought a draft of a new sign ordinance to council for consideration because there has been insufficient input from borough residents and business owners. Varner Friday encouraged members of the public to voice their opinions about the sign ordinance to council, either through letters, a blog on the borough's Web site or in person.

``This is not just about me," Varner said. ``It's about the future of the community."

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