

IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
DIVISION OF ADMINISTRATIVE HEARINGS

-----X
IMMACULATE CONCEPTION :
CORPORATION & DON :
BOSCO HIGH SCHOOL, :
: Appellant, :
vs. : DOCKET NO. 00DOTRW-2
: :
IOWA DEPARTMENT OF :
TRANSPORTATION, OFFICE :
OF RIGHT OF WAY, :
: Respondent, :
: :
-----X

ORIGINAL

Conference Room, Third Floor
Lucas State Office Building
Des Moines, Iowa
Thursday, December 14, 2000

The above-entitled matter came on for
hearing at 9:00 a.m.

BEFORE: JOHN M. PRIESTER, Administrative Law Judge

APPEARANCES:

For the Claimant: JOHN W. HOLMES, ESQ.
Holmes & Holmes
Suite 612
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Waterloo, Iowa 50701

For the Respondent: MARK HUNACEK, ESQ.
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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>For Respondent:</u>				
Steven Westvold	14	19	41	
<u>For Appellant:</u>				
Leo Becker	46	60		

E X H I B I T S

<u>APPELLANT EXHIBITS</u>	<u>RECEIVED</u>
1 through 4 - Photos taken in Gilbertville	53
5 through 9 - Photos taken in Lamont	53
10, 11, 12, 14 - Photos taken in Elkader	53
13 - Map	49
15 - Videotape	56

P R O C E E D I N G S

1
2 THE ADMINISTRATIVE LAW JUDGE: We're on
3 the record.

4 This is the matter of Immaculate
5 Conception Corporation and Don Bosco High School,
6 Appellant, versus Iowa Department of
7 Transportation Office of Right of Way, Respondent.
8 This is Case No. 00DOTRW-2.

9 The case comes on for an in-person
10 hearing this 14th day of December of the year
11 2000, 9 a.m. We're on the third floor of the
12 Lucas State Office Building. Present today is
13 attorney John Holmes representing the Appellant in
14 this matter, and Assistant Attorney General Mark
15 Hunacek representing the Department of
16 Transportation in this matter.

17 Discussions were held off the record and
18 both parties were in agreement that the transcript
19 made by the court reporter will be the official
20 transcript of this matter.

21 Mr. Holmes, you are in agreement with
22 that?

23 MR. HOLMES: Yes, sir.

24 THE ADMINISTRATIVE LAW JUDGE: Mr. Hunacek,
25 you are also in agreement with that?

1 MR. HUNACEK: Yes, sir.

2 THE ADMINISTRATIVE LAW JUDGE: So there
3 will be no tape recording made by the Division of
4 Administrative Hearings. We will rely upon the
5 transcript made by the court reporter.

6 The hearing today is being held pursuant
7 to an appeal by Immaculate Conception Corporation
8 regarding notice sent out by the Department of
9 Transportation that various signs that are on the
10 ball diamonds, the home run fences, are in
11 violation of the Department of Transportation's
12 rules and Iowa statutes, and filed an appeal of
13 that notice.

14 It is my understanding there are 36
15 various signs. I'll not enumerate them.

16 MR. HUNACEK: Thirty-seven.

17 THE ADMINISTRATIVE LAW JUDGE: Thirty-
18 seven? Thank you, Mr. Hunacek. Thirty-seven
19 signs that are in question today. I'll not go
20 through those, but the notices sent out by the
21 Department of Transportation are part of the
22 record.

23 The administrative file in this matter
24 consists of a notice of in-person hearing setting
25 today's time and date mailed out on October 20th.

1 This next document is an October 16th letter from
2 Mr. Hunacek to the Department of Inspections and
3 Appeals indicating that the Appellant has
4 requested a contested hearing, and Mr. Hunacek
5 requests that this be set for an in-person
6 hearing.

7 The next document is a transmittal slip.
8 That's the document that transfers jurisdiction
9 from the Department of Transportation over to the
10 Division of Administrative Hearings to hold this
11 contested case hearing.

12 Next is an August 18th letter from Mr.
13 Holmes to Assistant Attorney General Mark Hunacek
14 requesting various items.

15 And, Mr. Hunacek, was this then taken as
16 the appeal letter?

17 MR. HUNACEK: Yes.

18 THE ADMINISTRATIVE LAW JUDGE: Okay.
19 That was considered the appeal letter which
20 started the contested case matter.

21 The next document in the administrative
22 file is an August 16th letter to Mr. Holmes from
23 Mr. Hunacek regarding the signs. Then there's an
24 August 1st letter to Linda Ferguson at the
25 Advertising Control Section of the Iowa Department

1 of Transportation from Mr. Holmes. And there's a
2 copy of a newspaper article entitled "Catholic
3 School Signs May Violate Iowa Code" from the
4 Waterloo Courier dated April 18th of the year
5 2000.

6 Next is a May 10th memo submitted by
7 Linda Walz, right of way, regarding a May 10th
8 phone call from Senator Grassley's office.

9 Then there's a memo to the Iowa
10 Department of Transportation file to the Office of
11 Traffic Engineering and Safety from Steve
12 Westvold; subject: Don Bosco High School
13 Ballfield Signs. That is dated April 11 of the
14 year 2000.

15 The next document is a letter from Linda
16 Ferguson from the advertising control section to
17 Principal Hrabe. That was dated February 28th.
18 It is regarding an extension of time to deal with
19 the signs until August 7th.

20 The next document is a letter from the
21 principal, Hrabe, to Ms. Ferguson dated February
22 24th requesting that they be given until August
23 7th to plan and interact with the sponsors and
24 advertisers of the board.

25 The next document is a letter from Don

1 Bosco High School--actually it's the same copy of
2 the last letter. The first letter which was
3 mentioned has handwritten, "Steve, what do you
4 say? Okay." Then there's a copy without that.

5 The next document is a certified letter
6 dated January 31st to Immaculate Conception
7 School; subject: Request to remove or bring
8 outdoor advertising signs into compliance with the
9 provisions of the Iowa Billboard Control Law dated
10 January 31st. That was sent by Linda Ferguson,
11 advertising control section. That letter lists
12 the advertisers that are in question.

13 The next document is a Department of
14 Transportation memo to the Office of Advertising
15 Control from Barry Sieh; subject: Gilbertville
16 ballfield signs. The memo says, "On September
17 15th, 1999, I took these photos. The camera date
18 is incorrect. I ran some measurements to the
19 nearest business and none were within 750 feet of
20 the signs."

21 Then we have three pages of photographs
22 of the area. Also included in the administrative
23 file are the 37 notices to the various sign owners
24 informing them that their signs are not in
25 compliance with Iowa law.

1 That is the administrative file in its
2 entirety.

3 Today's testimony will be reported and it
4 will be under oath.

5 Mr. Hunacek, would you like to give an
6 opening statement in this matter?

7 MR. HUNACEK: First, Your Honor, I would
8 like to slightly correct something. I don't
9 believe that those 37 notices were actually ever
10 sent.

11 THE ADMINISTRATIVE LAW JUDGE: Okay.

12 MR. HUNACEK: My understanding is that
13 the DOT was in discussions with the petitioners in
14 this matter and it was understood that the notices
15 would be sent, and the problem was made aware to
16 the petitioners, but the notices were never sent.

17 However, it has also been my
18 understanding from discussions with counsel that
19 we're going to stipulate that those notices
20 have--that we're going to treat those notices as
21 though they have been sent, and no defense is
22 going to be made or no defense to the removal is
23 going to be made on the fact that proper notice
24 has not been sent; is that correct?

25 MR. HOLMES: That's correct.

1 THE ADMINISTRATIVE LAW JUDGE: Okay.

2 Thank you for correcting that.

3 MR. HUNACEK: So for all practical
4 purposes this tribunal can view them as having
5 been sent.

6 Basically, the DOT's position in this
7 case is fairly simple. The signs in question are
8 37 signs located on a fence around a ballfield in
9 a high school in Gilbertville not far from
10 Waterloo. The signs are visible from the
11 interstate highway that goes by. They are within
12 the adjacent area of the highway.

13 Section 306C.11 of the code prohibits
14 advertising within the adjacent area, subject to
15 certain exceptions that are not relevant here.
16 The DOT's position is that these signs located on
17 this ballfield fence visible from the highway are,
18 in fact, advertising and therefore fall within the
19 prohibition of Section 306C.11.

20 THE ADMINISTRATIVE LAW JUDGE: Thank you.

21 Mr. Holmes, would you like to give an
22 opening statement at this time?

23 MR. HOLMES: Yes, I would.

24 THE ADMINISTRATIVE LAW JUDGE: Please
25 proceed.

1 MR. HOLMES: The case that is before you
2 today really involves looking at the word
3 "visible" in Section 306C.10(21) and how that
4 definition in that section applies in Section
5 306C.12 where the code says, "An advertising
6 device shall not be constructed or reconstructed
7 beyond the adjacent area if it is visible from the
8 main traveled way of any interstate or primary
9 highway," and then there are some exceptions.

10 The ballfield that Mr. Hunacek referred
11 to is in the town of Gilbertville, Iowa, and it is
12 just off of Highway 297, and we have some
13 photographs of that. We also have a videotape
14 that we'd like to show.

15 It is not close enough that you can see
16 it from the interstate highway, but Highway 297
17 became a primary highway at some time. It used to
18 be a county blacktop going up to the little town
19 of Raymond.

20 The real question in the case is that
21 these signs are 4 by 8 signs, which are, the
22 evidence will show, 300 feet in the case of the
23 softball field or 400 feet in the case of the
24 baseball field--actually more than 300 feet and
25 more than 400 feet from the main traveled way of

1 Highway 297.

2 The evidence we expect will also show
3 that the DOT has never considered the question of
4 whether or not these signs can be read or
5 comprehended from the main traveled way as you're
6 traveling.

7 I don't think they have any evidence to
8 support that, and we have a man here whose job it
9 is to work on the signs, who is a life-long
10 resident of the town of Gilbertville, who is going
11 to testify about that, and we have a videotape to
12 show what we're talking about.

13 The evidence is also going to show that
14 this particular road is elevated above the
15 ballfield by about eight feet. And so when you're
16 traveling the road and your eyes are on the road,
17 you really don't see these signs at all. You have
18 to make a special effort to look over and see the
19 signs.

20 We also believe the evidence will show
21 that if you make the special effort and you look
22 over, you can only get a glimpse of them. They
23 are not readily visible. They are not in plain
24 view. About half of the signs on each field are
25 perpendicular to the highway and they are

1 practically impossible to see in any event under
2 all circumstances.

3 It's only really the signs that are on
4 the left field fence of the softball diamond and
5 the right field fence of the baseball diamond that
6 you can get any glimpse of at all if you
7 deliberately look over and try to read them.

8 We believe the evidence will also show
9 that the wording and the telephone numbers and
10 addresses and details that are on the signs is so
11 small that you can't read it from the highway. A
12 few of the signs are, I think the evidence will
13 show, what you call an icon-type sign, and I think
14 the evidence will show that if you're familiar,
15 for example, with the McDonald's golden arches, if
16 you are on this road you could recognize the
17 golden arch big giant "M" from the road, but as
18 far as many of the signs' content and message, we
19 believe the evidence will show that you can't read
20 it, you can't comprehend it, and therefore it is
21 not visible within the meaning of Section
22 306C.10(21).

23 Another part of the case is that these
24 signs are actually there because of a booster
25 club, and the booster club takes the revenue from

1 hanging the signs on the fences to buy uniforms
2 and so forth, and we think that that's protected
3 as commercial speech under both the Federal and
4 the Iowa constitutions, and I realize that there's
5 case authority that says that you as an ALJ may
6 not be able to make rulings on that, but we want
7 to make a record so that in case we have to later
8 on, we haven't waived any of the rights of the
9 appellants with respect to the commercial speech
10 issues under both state law and under federal law.

11 And we also in that respect don't believe
12 that there is going to be any evidence from the
13 DOT of any empirical testing to demonstrate a
14 relationship between these 4 by 8 signs that are
15 over 300 feet from the right-of-way and driver
16 distractions, or driver's information processing
17 ability. We don't think they have any evidence to
18 show any aesthetic impact upon the roadside
19 environment, upon any highway traveler, or upon
20 the adjacent property users.

21 We think the evidence will show that they
22 have not taken into account anything about this
23 community, and if they are trying to promote any
24 sort of aesthetic interest, they have totally done
25 nothing to evaluate whether or not the signs have

1 any impact aesthetically on the community of
2 Gilbertville, Iowa.

3 We believe the evidence will show that
4 the facts are that these 4 by 8 signs pose no
5 danger to the traffic safety interests of the
6 State of Iowa. We believe the evidence will show
7 that these 4 by 8 signs on these fences pose no
8 danger to the general welfare of the State of
9 Iowa, and that applying Section 306C.12 or Chapter
10 306C and the regulations to these little signs on
11 these two fences in the town of Gilbertville,
12 Iowa, is an unjustifiable application of law to
13 fact, or it is otherwise unreasonable within the
14 meanings of Section 17A.19, subparagraph 10,
15 subparagraphs M and N.

16 THE ADMINISTRATIVE LAW JUDGE: Thank you.

17 Mr. Hunacek, would you like to call your
18 first witness?

19 MR. HUNACEK: Thank you. I would like to
20 call Steven Westvold.

21 STEVEN WESTVOLD,
22 called as a witness by the Respondent, being first
23 duly sworn by the Administrative Law Judge, was
24 examined and testified as follows:

25 THE ADMINISTRATIVE LAW JUDGE: Please

1 proceed.

2 DIRECT EXAMINATION

3 BY MR. HUNACEK:

4 Q. Mr. Westvold, would you spell your name
5 for the court reporter, please?

6 A. Steven, S-t-e-v-e-n, Westvold,
7 W-e-s-t-v-o-l-d.

8 Q. What do you do for a living, Mr.
9 Westvold?

10 A. I work for the Department of
11 Transportation. I manage the Department's
12 beautification program.

13 Q. And in that capacity are you responsible
14 for enforcing the State laws about signs?

15 A. Responsible for the congressional mandate
16 to control signs adjacent to interstate and
17 primary highways.

18 Q. Okay. Could you describe the signs that
19 are the subject of this hearing, just the physical
20 location of the signs, where they are, in what
21 mode they are, so to speak?

22 A. The signs in question are approximately 4
23 by 8 feet. They are located on the outfield fence
24 of two ballfields, on generally the south side of
25 Highway 297, in the town of Gilbertville, Iowa.

1 Q. Is Highway 297 a primary state highway?

2 A. Yes, it is.

3 Q. At least in the vicinity of these signs?

4 A. Yes.

5 Q. How many signs in question are there?

6 A. Thirty-seven, I believe.

7 Q. And these signs advertise various

8 businesses in the location or the general vicinity

9 of Gilbertville?

10 A. Yes.

11 Q. Have you personally observed these signs?

12 A. Yes, I have.

13 Q. Have you driven along Highway 297?

14 A. Yes, I have.

15 Q. Were these signs visible to you from

16 Highway 297?

17 A. Yes, they were.

18 Q. Now, in what sense do you use the word

19 "visible"?

20 A. The measure that I use is the definition

21 contained in both--in 306C, capable of being read

22 or comprehended by a person with normal visual

23 acuity without assistance.

24 Q. Are there other signs that point away

25 from the highway that you're not concerned about,

1 or do all the signs point toward the direction of
2 the highway?

3 A. The signs in question are visible from
4 the highway. If the sign isn't visible from the
5 highway, it's not a concern to us. If there were
6 signs on the near fence along the highway, with
7 the back of the sign to the highway, they wouldn't
8 be visible, therefore they wouldn't be legible.

9 I also drove in the driveway where people
10 pull in when they are apparently observing the
11 ballgames, and the bleachers are there, and it's
12 about the same distance from the bleachers to the
13 signs as it is from the highway to the signs. And
14 the signs would be visible from the bleachers
15 also.

16 Q. Are the signs within or without the
17 adjacent area of the highway?

18 A. They are within the adjacent area.

19 Q. And for the record, why don't you tell us
20 what you mean by the phrase "adjacent area"?

21 A. The adjacent area is the area within 660
22 feet of the highway right-of-way measured on a
23 line perpendicular to the centerline of the
24 highway, and from the right-of-way line you
25 measure out 660 feet. In town that's the limit of

1 our control. If the sign is beyond that, it
2 doesn't make any difference whether it is visible
3 or not. It is not subject to control. If it is
4 within 660 feet and visible, that's the measure of
5 control. In this case I think the entire ball
6 diamonds are within 660 feet.

7 Q. All right. Mr. Holmes mentioned in his
8 opening statement that you didn't conduct any
9 specific empirical studies of these particular
10 signs. Is that correct?

11 A. That is correct.

12 Q. Why didn't you?

13 A. Because our job is to take the law that
14 was passed by the Iowa Legislature and the
15 administrative rules that were promulgated to
16 carry out the law and enforce those as written by
17 the Legislature, not to question the law or the
18 basis for the law. We enforce the law that's
19 there.

20 Q. And the basis for your request that these
21 signs be removed is Section 306C.11?

22 A. That's correct.

23 MR. HUNACEK: All right. I have nothing
24 else. Thank you.

25 THE ADMINISTRATIVE LAW JUDGE: One

1 moment, Mr. Holmes.

2 MR. HOLMES: Excuse me?

3 THE ADMINISTRATIVE LAW JUDGE: One
4 moment, please, while I finish my notes.

5 Okay. Mr. Holmes, cross-examination.

6 MR. HOLMES: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. HOLMES:

9 Q. Mr. Westvold, do you recollect that I
10 came to Ames and took your deposition; is that
11 right?

12 A. That's correct.

13 Q. Do you remember when that was?

14 A. It was December 6th; is that correct?
15 November 6th. November 16th. Okay. Recently.

16 Q. November 16th; is that right?

17 A. That's correct. That's what it says on
18 the front of the deposition.

19 Q. And on November 16th do you recollect
20 whether I asked you if you had been out to look at
21 these signs in Gilbertville?

22 A. Yes.

23 Q. And on November 16th, had you been out to
24 look at the signs in Gilbertville?

25 A. I had not.

1 Q. Okay. So isn't it a fact in this case
2 that the notices to cause these signs to be taken
3 down was a decision that you made before you ever
4 drove out yourself and tried to look at the signs
5 in person?

6 A. That's correct. It was based on a direct
7 question and discussion I had with the agent who
8 had been there and taken the pictures.

9 Q. Okay. So your activities in going out to
10 look at these signs yourself is activities that
11 you made after the decision that you were going to
12 revoke these signs, isn't that right?

13 A. That's correct.

14 Q. Now, I'd like to ask you about the trip
15 that you did make to Gilbertville. Is it a fact
16 that that was after the deposition on November
17 16th?

18 A. Yes.

19 Q. Okay. When was it?

20 A. Yesterday.

21 Q. What was the weather like yesterday?

22 A. The weather? It was challenging
23 yesterday.

24 Q. Would you explain to us what you mean by
25 that?

1 A. It was snowing, light snow all day long.

2 Q. What time of day was it that you were in
3 the town of Gilbertville?

4 A. Probably mid-afternoon.

5 Q. Do you actually recollect when you were
6 there?

7 A. Within a range of an hour or so. Two to
8 3:30 would be my guess.

9 Q. You don't recollect?

10 A. I didn't keep a log, no, and my digital
11 camera didn't work so I don't have the time stamp
12 from that.

13 Q. Was anyone with you?

14 A. No.

15 Q. When you were in the town of Gilbertville
16 yesterday, how many times did you drive back and
17 forth on the stretch of Highway 297 that's next to
18 these ballfields?

19 A. I drove by the ballfields twice. I
20 stopped on the other side and sat there while I
21 took a few photographs with a 35 millimeter
22 camera.

23 Q. All right. Now, a number of these signs
24 show up in this--

25 MR. HOLMES: You have a stack of files

1 there and the judge has a stack of the letters and
2 there's a photograph with every one of those
3 notices, and I'd like to refer to some of these,
4 and we don't have any common number to use other
5 than just the nomenclature that's on the sign. I
6 don't know whether your stack is in the same
7 sequence that his stack is, but I think my stack
8 is in the same sequence, so if you would bear with
9 us, we'll try to deal with this.

10 THE ADMINISTRATIVE LAW JUDGE: That's
11 fine.

12 BY MR. HOLMES:

13 Q. Can you find the sign for Backes and
14 Schaefer Plastering Company?

15 MR. HUNACEK: John, maybe you can just
16 tell him the number.

17 MR. HOLMES: It should be the number--the
18 second one. Okay?

19 MR. HUNACEK: Yes.

20 BY MR. HOLMES:

21 Q. Have you found it?

22 A. Yes.

23 Q. Do you remember seeing that sign
24 yesterday?

25 A. No, I don't recall seeing that sign

1 yesterday. I didn't make note of which signs--I
2 didn't have the checklist, I didn't have the
3 files. I just looked at the signs that were
4 there. If it is the same--

5 MR. HUNACEK: Excuse me. Judge, for your
6 benefit, this is violation 99-28-002.

7 MR. HOLMES: Well, there's a number.

8 MR. HUNACEK: It's in the upper
9 right-hand corner of the report, John.

10 THE ADMINISTRATIVE LAW JUDGE: Keep
11 going. Some of these are stapled together. It's
12 going to take me a while to get them figured out.
13 So you can proceed, Mr. Holmes.

14 BY MR. HOLMES:

15 Q. You can't tell me which fence has that
16 sign on it, can you?

17 A. No, I can't, because I didn't take the
18 files with me. It wasn't my objective to verify
19 all the information in the files because the
20 decision had been made. I was satisfying myself
21 that they were visible and I just ran down the
22 signs, looking for ones that I couldn't make out
23 who the advertiser was.

24 Q. You can't really testify under oath today
25 that you could read the telephone number 235-1801

1 on this sign from the road as you drove past, can
2 you?

3 A. No. No. Because I didn't take notes.

4 Q. If you would turn to sign number 99-28,
5 number 3.

6 MR. HOLMES: Your Honor, it should be the
7 third one from the top in your stack.

8 THE ADMINISTRATIVE LAW JUDGE: These were
9 mixed up.

10 MR. HOLMES: Okay.

11 Q. It's a sign for the Elk Run Truck Plaza;
12 is that correct?

13 A. Yes, it is.

14 Q. Can you testify today under oath that you
15 could read the letters I-380 and Highway 20 at
16 Exit 68 from the road?

17 A. No. I could get the message by reading
18 Elk Run Truck Plaza or Blimpie's.

19 Q. Are you--

20 A. If just the name Blimpie's was up there,
21 that would be enough to be visible to be an
22 advertising device subject to control.

23 Q. Did you take any measurements of the
24 letters "Blimpie" on that sign?

25 A. Did not.

1 Q. Okay. You don't have any idea how big
2 those letters are?

3 A. No, I don't.

4 Q. Okay.

5 A. I just know whether I could read them.

6 Q. Do you have an independent memory today
7 of seeing that sign? Can you tell me where it was
8 located?

9 A. No.

10 Q. So you don't have an independent memory
11 of where it is?

12 A. No.

13 Q. And how many times did you drive past it
14 yesterday?

15 A. I drove past twice.

16 Q. When you--

17 A. And I stopped and sat on the other side
18 of the road with my rotary amber beacon lights.

19 Q. If it's a fact that the Backes and
20 Schaefer Plastering sign is right next to the Elk
21 Run Plaza sign--if it's a fact--and if it's also a
22 fact that they are both on the left field fence of
23 the softball field, is it your testimony that a
24 person driving west on Highway 297 could read
25 Backes and Schaefer Plastering Company and the

1 phone number and then read Elk Run Truck Plaza,
2 I-380 and Highway 20, Elk Run Heights, Junie's
3 Restaurant and Blimpie's?

4 A. No, it is not.

5 Q. It is not your testimony?

6 A. No, it is my testimony that the signs are
7 visible from the highway. That is the measure
8 that we apply. It's not traveling at any given
9 speed. It's not-- The question is is it visible.
10 If I'm standing on the highway, not driving, and I
11 can--and the sign is visible, that's the measure.
12 Is it capable of being seen and comprehended from
13 the highway? Not at any speed, not driving this
14 way or that; is the sign visible, period.

15 Q. Let's turn to the next one which is the
16 Family Care for Timothy C. Horrigan, violation No.
17 99-28-004.

18 MR. HUNACEK: Your Honor, before he goes
19 through the remaining 35 signs, I would like to
20 lodge an objection on the grounds that this is
21 becoming repetitive. The point he's made is that
22 Mr. Westvold can't remember the location of a
23 particular sign. We'll stipulate to that. But if
24 he is planning to go through 35 signs and ask him
25 whether he can read the phone number of each one

1 or whether he can identify it in location to the
2 other signs, I think it's repetitive.

3 THE ADMINISTRATIVE LAW JUDGE: Mr. Holmes,
4 is that your intent to go through all the signs?

5 MR. HOLMES: No.

6 THE ADMINISTRATIVE LAW JUDGE: How many
7 more signs were you going to go through?

8 MR. HOLMES: Well, if we would look at
9 number 007, which is the First Security Better
10 Homes and Gardens, and if we look at the Family
11 Care that I mentioned a second ago, which is
12 number 4, I guess the first point that I'm going
13 to make, which is not anything that's covered by
14 his objection, is that you have a number of these
15 signs on the left field fence of the softball
16 field. They are the closest ones that are facing
17 toward the highway which is running parallel to
18 the fences. You cannot, I don't believe--and he's
19 the witness. I'd like to ask him if he can read
20 all these signs as he drives by. He can't.

21 THE ADMINISTRATIVE LAW JUDGE: Okay. Why
22 don't you ask him that question.

23 MR. HOLMES: Yes.

24 Q. If you assume that the Family Care sign
25 is the next one, and you can refresh your

1 recollection about what it looks like, and then
2 the next one is Waterloo Implement and the next
3 one is First Security Better Homes and Gardens,
4 Ron Frost, "For all your real estate needs," isn't
5 it a fact that you cannot read those signs as you
6 drive by?

7 A. I didn't attempt to read those signs as I
8 drove by. I attempted to see if they were
9 visible, if I could comprehend. And it is not all
10 of the signs collectively, it is any one sign.
11 When we look at a sign, is it subject to control,
12 from the highway is the sign visible, not while
13 I'm driving is it visible or do I have to turn my
14 head, but is the sign visible. That's what the
15 law says.

16 Q. I'd like you to turn to sign number
17 violation 99-28-10, please. Have you found it?

18 A. Uh-huh.

19 Q. Is it a fact that that is a sign for
20 Harting Northland Insurance Agency?

21 A. Yes.

22 Q. Okay. Can you tell me what fence it's
23 on?

24 A. No, I can't.

25 Q. All right. If you will assume that

1 that's on the right field fence of the softball
2 field, okay, can you describe for me where that
3 fence is in relation to the centerline of Highway
4 297 that's closest?

5 A. Well, I don't know which field is the
6 softball field.

7 Q. Okay. Well, the softball field, I'll
8 tell you, is the more easterly field.

9 A. Okay.

10 Q. So this is on the right field fence of
11 the softball diamond. Where is it visible from
12 the highway?

13 A. It would be at a point east of the fence
14 if it's the right field fence.

15 Q. Uh-huh. Can you testify as a fact that
16 you could read this sign from Highway 297?

17 A. What--

18 Q. Yes or no.

19 A. I can testify that it's visible.

20 Q. Well, the question is can you read it?

21 A. I can comprehend it.

22 Q. Could you read this sign, and where on
23 Highway 297 would you have to stand to be able to
24 read the sign?

25 A. If--

1 Q. Isn't it a fact that when you were out
2 there yesterday, there wasn't any spot on Highway
3 297 where you could read that sign?

4 A. No.

5 Q. Well, where were you standing when you
6 read the sign?

7 A. I was on the opposite side of the road.

8 Q. And how far away from the sign were you?

9 A. Since I don't know exactly where it is, I
10 don't know. Less than 400 feet would be a
11 ballpark guess. See, I don't have a chart that
12 tells me where they are located on the fence. I
13 just looked at all the signs to see if in fact
14 they were or weren't visible, and my conclusion
15 was yes, they are.

16 Q. Let's take sign number 99-28-018.

17 A. Zero what?

18 Q. 018.

19 A. Okay.

20 Q. Does your record show this is a sign for
21 Cedar River Milling?

22 A. Yes, it does.

23 Q. Do you know where that sign is located?

24 A. No, I do not.

25 Q. All right. If the evidence shows that

1 that sign is located on the left field of the
2 baseball fence, can you testify under oath that
3 you can read that from the highway driving down
4 the highway? Yes or no.

5 A. Driving down the highway?

6 Q. Driving west--

7 A. I can testify that it is visible from the
8 highway.

9 Q. Do you have an independent recollection
10 of seeing that sign yesterday?

11 A. No.

12 Q. Can you honestly testify that you can
13 read "Livestock Feed--Seed Bean Cleaning--Backyard
14 Bird Feed and Supplies" from the highway?

15 A. No.

16 Q. I'd like you to turn to No. 99-28-033.

17 A. Okay.

18 Q. It's a sign for the Gilbertville Locker.
19 Do you have an independent memory of seeing that
20 sign yesterday?

21 A. No.

22 Q. Is there any way you can just look at
23 that photograph that you have and tell how big the
24 letters for "Gilbertville Locker" are as opposed
25 to the letters for "Wholesale and Retail Meats"?

1 Yes or no.

2 A. No.

3 Q. Did you take any measurements of the
4 actual distances from any of these fields to the
5 traveled portion of the roadway?

6 A. No.

7 Q. Are you familiar with something called
8 the accident location analysis system?

9 A. Vaguely.

10 Q. Are you familiar with the PCALAS?

11 A. I'm not.

12 Q. Isn't it a fact that the Iowa Department
13 of Transportation maintains a database of traffic
14 records sent in by investigating officers as well
15 as drivers involved in crashes occurring on the
16 public roads in Iowa?

17 A. It's my understanding.

18 Q. Isn't it a fact that all crashes that
19 result in a fatality or personal injury or at
20 least \$500 property damage are included in the
21 database?

22 A. That's also my understanding.

23 Q. Isn't it a fact that local agencies can
24 get crash statistics regarding fatalities, injuries
25 and property damage on crashes from the DOT based

1 on location?

2 A. It is my understanding they can.

3 Q. Isn't it a fact that if you wanted to,
4 you could check the ALAS system for this stretch
5 of Highway 297 and obtain data about whether or
6 not there had been any traffic accidents?

7 MR. HUNACEK: I'm going to object to that
8 as being irrelevant. The question of whether
9 there has or has not been any particular accident
10 in front of a particular sign is irrelevant to any
11 legal question concerning the validity of the
12 statute prohibiting that sign.

13 If this is in reference to his
14 constitutional claim, he's trying to make a record
15 for it, it suffices to note that you cannot
16 declare a sign--or statute to be unconstitutional
17 simply because there's no particular proof that
18 that particular statute has worked for one
19 particular sign.

20 Even assuming that you have to show
21 relevance that this statute affects public safety,
22 it would suffice if any one sign anywhere caused
23 an accident, not necessarily the particular sign
24 at issue in this case.

25 So the questions concerning fatalities or

1 accidents at this particular stretch of road in
2 front of these particular signs is just irrelevant
3 to any issue in this case.

4 THE ADMINISTRATIVE LAW JUDGE: Mr. Holmes,
5 would you like to respond to the argument?

6 MR. HOLMES: There were a number of
7 arguments made. I can't even remember my
8 question.

9 MR. HUNACEK: I think your question was
10 whether he could, if he wanted to, check out
11 statistics for fatalities or accidents.

12 MR. HOLMES: I believe I'm entitled to
13 ask him as a matter of fact whether or not he
14 checked the system for this location. Did I get
15 an answer to that question?

16 THE ADMINISTRATIVE LAW JUDGE: Actually,
17 just to keep this moving along, the relevancy I
18 question at this point but I'm going to let the
19 question stand so we can get--I think Mr. Holmes
20 is entitled to make his record on the issues that
21 he has raised. I think whether this is, you know,
22 an irrelevant issue will be determined in the
23 decision, but I'll let him pursue this line of
24 questioning. Please proceed, Mr. Holmes.

25 MR. HUNACEK: Just for the sake of moving

1 things along, can I have a standing objection?

2 THE ADMINISTRATIVE LAW JUDGE: Yes,

3 that's fine.

4 Do you remember the question, Mr. Westvold?

5 THE WITNESS: No.

6 MR. HOLMES: Let her read it back.

7 THE WITNESS: Was it could I or did I?

8 THE ADMINISTRATIVE LAW JUDGE: Yes, will

9 you read that question?

10 (Question read by the reporter.)

11 A. I don't know if my current mainframe
12 clearance would allow me. You have to have
13 access, first of all, to the kind of record it is.
14 Just because I'm on employee doesn't give me the
15 right to look at anything the DOT has.

16 Assuming that I needed to look at it, I
17 could have some mainframe administrator give me
18 the necessary approval to access that information
19 and review it.

20 BY MR. HOLMES:

21 Q. Have you done it or not?

22 A. No. I don't know where it is or--I know
23 it exists.

24 Q. Do you know anyone that's involved in
25 administering Chapter 306C for the DOT that

1 routinely does that?

2 A. No.

3 Q. If anybody would have knowledge of that,
4 you would, wouldn't you?

5 A. Right.

6 Q. Isn't it a fact that you routinely don't
7 ever look at the statistics that are available
8 when you're assessing what to do about a
9 particular sign?

10 A. Well, there are a phenomenal amount of
11 statistics available about any given, you know,
12 location. No, we don't.

13 Q. You don't remember--

14 A. What we do is look at--306C, the
15 administrative rules, are in agreement with the
16 Secretary of Transportation. The things that are
17 outlined in those are the guidelines for us.
18 That's what we use as a basis for making a
19 decision. Is it visible? Is it within the
20 adjacent area?

21 MR. HUNACEK: Steve, he is asking whether
22 you look at accident statistics for a particular
23 sign.

24 A. Oh, accidents? I thought you said
25 statistics in general. No. Accident statistics,

1 no. I misunderstood your question.

2 BY MR. HOLMES:

3 Q. I'm just saying as a general matter you
4 don't even look at accident statistics?

5 A. No.

6 Q. Do you have any study that shows that 4
7 by 8 signs on a fence more than 300 feet from the
8 traveled portion of the road is a distraction to
9 drivers?

10 A. No.

11 Q. Do you have any empirical data of any
12 kind to show that taking these signs down improves
13 the aesthetics of the surrounding road
14 environment?

15 A. No.

16 MR. HUNACEK: I assume my standing
17 objection applies to aesthetics as well as safety.

18 THE ADMINISTRATIVE LAW JUDGE: Yes

19 BY MR. HOLMES:

20 Q. Suppose someone wanted to put a temporary
21 political sign in the middle of one of these
22 ballfields, a big huge one that was easily in full
23 view from the travel portion of the road. Is that
24 permitted?

25 A. Yes, it is.

1 Q. Suppose someone wanted to advertise a
2 special event within the meaning of Section
3 306C.23 of the code and put a giant visible sign
4 in the middle of one of these ballfields that was
5 in full view and easily read from the traveled
6 portion of 297. Is that allowable?

7 A. Giant?

8 Q. Huge.

9 A. No.

10 Q. What's the limit there?

11 A. Thirty-two square feet.

12 Q. Could they have a 32-square feet sign
13 advertising a special event and put it in the
14 middle of the ballfield?

15 A. Sponsored or approved by the city,
16 county, or school district, a non-commercial
17 event, yes.

18 Q. So what is the common denominator between
19 a temporary political sign or a special event, as
20 you described it, versus these signs? Why is one
21 allowed and the other prohibited?

22 A. The political sign, the special event
23 signs, are specifically authorized by 306C,
24 provided for. These are not. If the Legislature
25 provided for this type of sign, they would be

1 allowed also.

2 Q. As the administrator who is charged with
3 enforcing Chapter 306C for the State of Iowa, do
4 you have any formula or rule to tell you how large
5 lettering can be for it to be able to be read at
6 any particular distance? Yes or no.

7 A. No.

8 Q. Can you articulate for me what it is that
9 is your understanding as the administrator charged
10 with the responsibility of enforcing Chapter 306C,
11 what is the State interest that you are serving
12 when you enforce this statute on this ballfield
13 and this town today?

14 A. Well, what I would rely on is Congress
15 outlined the purpose--

16 Q. I said--

17 A. --in that section of the code.

18 Q. I said State interest. Do you know of
19 one?

20 A. Yes, I do.

21 Q. What is the State interest?

22 A. Congress mandated control of signs
23 adjacent to interstates and primary highways, and
24 the penalty for not maintaining effective control
25 is a loss of 10 percent of the federal highway

1 funding coming into Iowa. That's not 10 percent
2 of the DOT's federal funding, it is 10 percent off
3 the top, because from the standpoint of the
4 Federal Government, they treat Iowa as one entity
5 for highway funding.

6 Q. Other than a loss of federal funding, can
7 you identify any State interest that you are
8 promoting by enforcing this ordinance in this
9 down?

10 MR. HUNACEK: I'm going to object to
11 that. The State interests that have been
12 articulated are safety and aesthetics. It is not
13 Mr. Westvold's responsibility as a person to be
14 able to identify State interests. This is a legal
15 matter that can be addressed in briefs.

16 THE ADMINISTRATIVE LAW JUDGE: Mr. Holmes,
17 response?

18 MR. HOLMES: Well, since Mr. Hunacek just
19 answered the question, I don't know whether Mr.
20 Westvold can answer or not.

21 Q. It doesn't matter really, does it, Mr.
22 Westvold?

23 A. No. We rely on the purpose identified in
24 the first section of the Highway Beautification
25 Act of 1965. I've never attempted to--you know,

1 Congress mandated that states do it, and outlined
2 in the first section of the Highway Beautification
3 Act what the purpose was.

4 Q. Do you think--

5 A. And I wouldn't attempt to second-guess
6 Congress as to why they enacted legislation
7 mandating states to do something. That would be a
8 little presumptive on my part.

9 Q. So as far as any purpose is concerned,
10 you would look to whatever it was, the
11 congressional purpose back in 1965 by the United
12 States Congress?

13 A. And the responsibility--

14 Q. Is that yes or no?

15 A. Yes.

16 MR. HOLMES: Okay. Thank you. That's
17 enough. Thank you. I don't have any more
18 questions.

19 THE ADMINISTRATIVE LAW JUDGE: Redirect,
20 Mr. Hunacek.

21 REDIRECT EXAMINATION

22 BY MR. HUNACEK:

23 Q. Just very briefly on the issue of
24 political signs, Mr. Westvold. You said a big,
25 giant political sign easily visible from the

1 highway would be allowed?

2 A. A political sign is limited to 32 square
3 feet in area. It's questionable. There have been
4 challenges of that. 306C.22 outlines the period.

5 Q. And that's what I wanted to discuss with
6 you. There is a particular provision of the code
7 which specifically addresses political signs?

8 A. Yes.

9 Q. Is that right?

10 A. Yes. I didn't catch the "giant".

11 Q. No, Mr. Westvold, my question is, there's
12 a specific provision of the code?

13 A. 306C.22 authorizes the political signs.

14 Q. And that even says that they are allowed
15 under certain circumstances, "Even if such
16 placement would otherwise be a violation of this
17 chapter?"

18 A. Yes.

19 Q. But it does impose some restrictions on
20 the placement, right?

21 A. Yes.

22 Q. One of the restrictions is in terms of
23 when the election is?

24 A. That's correct.

25 Q. So, for example, if we're talking about

1 the presidential election that was just very
2 recently concluded, if five days after the
3 election in November when the outcome of that
4 election was still in doubt, somebody would put up
5 a sign that said something like "Gore concede" or
6 something along those lines, that probably would
7 not be allowed by 306C.22; is that right?

8 A. We would--that would be a hazy question
9 where I would ask to have Dave Ferree give me a
10 little guidance, because when the whole election
11 is called into question--a political sign is to
12 promote your either a question or a candidate on a
13 ballot in an election. The election technically
14 didn't appear to be over, so we wouldn't rush to
15 say that the time frame for taking the signs
16 down--

17 Q. Maybe my question was a bad one. But the
18 point is the statute gives a time frame--

19 A. Right.

20 Q. --with regard to the election. It says
21 beginning 45 days before the date of the election
22 continuing up to the election?

23 A. Yes.

24 Q. Then there was also some discussion with
25 Mr. Holmes about special events signs.

1 A. That's correct.

2 Q. All right. Are they specifically
3 covered?

4 A. Yes, they are.

5 Q. And where are they covered?

6 A. That number doesn't pop into my head.

7 MR. HOLMES: 23.

8 A. 23. Thank you. 306C.23.

9 Q. So when you tell Mr. Holmes that these
10 signs would be allowed under certain circumstances
11 at least, you are simply saying that the statutes
12 make provision for them to be allowed?

13 A. Yes.

14 MR. HUNACEK: I have nothing else.

15 THE ADMINISTRATIVE LAW JUDGE: Recross,
16 Mr. Holmes?

17 MR. HOLMES: No, sir.

18 THE ADMINISTRATIVE LAW JUDGE: Okay.
19 Further evidence, Mr. Hunacek?

20 MR. HUNACEK: No, thank you.

21 (Witness excused.)

22 THE ADMINISTRATIVE LAW JUDGE: Mr. Holmes,
23 would you like to call your first witness?

24 MR. HOLMES: Yes, sir. Call Leo Becker.

25

1 LEO BECKER,
2 called as a witness by the Appellant, being first
3 duly sworn by the Administrative Law Judge, was
4 examined and testified as follows:

5 THE ADMINISTRATIVE LAW JUDGE: You may
6 proceed.

7 DIRECT EXAMINATION

8 BY MR. HOLMES:

9 Q. Tell us your name and address.

10 A. Leo Becker. L-E-O, B-E-C-K-E-R. 724
11 17th Avenue, Gilbertville, Iowa.

12 Q. How long have you lived in Gilbertville?

13 A. I've lived within the City of
14 Gilbertville since 1970, and before that on a farm
15 about three miles outside of Gilbertville.

16 Q. What is your relationship to these ball
17 diamonds in this case? What's your job?

18 A. I'm a parishioner for Immaculate
19 Conception Church and then I'm a booster club
20 member for the Don Bosco High School.

21 Q. And specifically with respect to the
22 signs that are on the fences at the softball field
23 or the baseball field, do you have any
24 responsibility?

25 A. We have different parents in the booster

1 club that take on certain responsibilities of the
2 booster club as far as the fund-raising, and I've
3 taken over the responsibility of helping to get
4 people to sponsor booster signs and taking care of
5 the maintenance and having a person paint these
6 signs for us and then hang them up and take them
7 down.

8 Q. So you call these signs booster signs?

9 A. That's what we call them.

10 Q. Is there any money involved in these
11 booster signs?

12 A. Yes, there is.

13 Q. And who pays the money and who gets the
14 money?

15 A. The money that is paid for them is paid
16 by whichever booster is a sponsor or whose name
17 appears on the sign, and then the money that we
18 receive goes into the booster club account.

19 Q. And what does the booster club use the
20 money in the booster club account for?

21 A. Various things, but mostly it's to help
22 the school buy uniforms for the teams or equipment
23 for the teams, and we have a special--not special,
24 but a certain kind of lime that's easier for the
25 athletes to play on that we purchase every few

1 years and that helps pay for that.

2 Q. I'm going to hand you what I've marked
3 for identification as Exhibit 13.

4 A. Okay.

5 Q. This is sort of a little map, is it not?

6 A. Yes, it is.

7 Q. And we have a portion there that we're
8 trying to indicate is the road; is that right?

9 A. Yes, sir.

10 Q. Would that be Highway 297?

11 A. Yes, it would.

12 Q. I guess we don't have any directions on
13 this. As you're looking at Exhibit 13, is north
14 toward the bottom and south--

15 A. Yes, it is. South would be--

16 Q. South toward the top?

17 A. Yes.

18 Q. Is it a fact that Highway 297 comes into
19 Gilbertville from the north and there's a big
20 curve and then it heads east and then it curves
21 and goes south again?

22 A. Yes, it is.

23 Q. Been that way a long time?

24 A. Yes.

25 Q. So these two ballfields are on the south

1 side of the road; is that right?

2 A. Yes, sir.

3 Q. And the easterly field is smaller than
4 the westerly field; is that right?

5 A. Yes.

6 Q. So the easterly field is for softball; is
7 that right?

8 A. Correct.

9 Q. And the westerly is for baseball?

10 A. Yes.

11 Q. And at my request did you go take
12 measurements of these distances?

13 A. Yes, I did.

14 Q. And have you written them on this
15 exhibit?

16 A. Yes, I have.

17 Q. Okay. Does this exhibit fairly represent
18 the relationships and the distances that are
19 involved in this case?

20 A. Yes.

21 MR. HOLMES: Offer Exhibit 13.

22 THE ADMINISTRATIVE LAW JUDGE: Objection,
23 Mr. Hunacek?

24 MR. HUNACEK: No objection.

25 THE ADMINISTRATIVE LAW JUDGE: Exhibit 13

1 is admitted into the record.

2 (Appellant Exhibit No. 13
3 was received in evidence.)

4 MR. HOLMES: I'll give you the originals,
5 Your Honor.

6 THE ADMINISTRATIVE LAW JUDGE: All right.
7 BY MR. HOLMES:

8 Q. I'm going to hand you photographs that
9 we've marked 1 through 14 with the exception of
10 13. Would you take a look at these, please?
11 First of all, is it a fact that Exhibits 1 through
12 4 are scenes in Gilbertville?

13 A. Yes, sir.

14 Q. And is it a fact that the rest of the
15 exhibits are not scenes in Gilbertville?

16 A. That is correct.

17 Q. Is it a fact that you took all the
18 photographs that we've got here marked 1 through
19 14 with the exception of 13?

20 A. Yes.

21 Q. Is that your van in Exhibits 1 through 3?

22 A. Yes, it is.

23 Q. How tall is your van?

24 A. Approximately 7 feet tall at the full
25 size.

1 Q. So is it a fact that the playing field
2 for the baseball and softball in Gilbertville is
3 about eight feet below the surface of Highway 297?

4 A. Yes, sir.

5 Q. What's the little garage that shows in
6 Exhibit 4?

7 A. That is our equipment shed where we keep
8 our lawn mowers and our bases and our athletic
9 equipment, all the tools we use.

10 Q. What's the fence that we see along the
11 right side of Exhibit 4?

12 A. That is a fence that we put up last
13 spring so we were able to start charging admission
14 for our athletic activities on the fields.

15 Q. Are there any signs on that fence?

16 A. No, sir.

17 Q. Is that fence the closest fence to the
18 traveled portion of Highway 297?

19 A. Yes, it is.

20 Q. Okay. What fence shows in Exhibit 3?

21 A. That would be the right field fence of
22 the softball field.

23 Q. Okay. You can see some signs on that, is
24 that right?

25 A. Yes, sir.

1 Q. You can see Bertch Cabinet; is that
2 correct?

3 A. Yes.

4 Q. Is the Bertch Cabinet sign that we see in
5 Exhibit 3 visible from the traveled portion of
6 Highway 297 to somebody that is eastbound?

7 A. No.

8 Q. Is the sign that we see for Bertch
9 Cabinet in Exhibit 3 capable of being read by
10 somebody who is traveling westbound on Highway
11 297?

12 A. Visible?

13 Q. Can you read it?

14 A. I would say no.

15 Q. How about the sign right next to it,
16 Harting Mueller--

17 A. Harting Northland.

18 Q. --something agency?

19 A. Harting Northland Insurance Agency. No.

20 Q. How about the one to the right of it for
21 Weldon Photography?

22 A. I doubt it.

23 Q. Okay. Is that because those signs are
24 perpendicular and they are hard to see?

25 A. Yes.

1 Q. Now, there's a number of photographs of
2 some town in Exhibits 5 through 9; is that
3 correct?

4 A. Yes, sir.

5 Q. What town is that?

6 A. There are two towns.

7 Q. Which town is in 5 through 9?

8 A. Exhibits 5 through 9 would be in the town
9 of Lamont, Lamont, Iowa.

10 Q. Did you take those photographs?

11 A. Yes, I did.

12 Q. And what town is showing in Exhibits 10,
13 11, 12, 14 and 15?

14 A. That would be Elkader, Iowa.

15 Q. Did you take those photographs?

16 A. Yes, I did.

17 Q. You took all these photographs at my
18 request?

19 A. Yes, I did.

20 MR. HOLMES: Offer Exhibits 1 through 14
21 with the exception of 13.

22 THE ADMINISTRATIVE LAW JUDGE: Objections,
23 Mr. Hunacek?

24 MR. HUNACEK: I certainly don't object to
25 the first four which are pictures of the scene at

1 issue here, but I question the relevance of the
2 photos showing other signs in other locations.

3 THE ADMINISTRATIVE LAW JUDGE: The
4 objection is noted and they are admitted into the
5 record.

6 (Appellant's Exhibit 1 through 12
7 and 14 were received in evidence.)

8 BY MR. HOLMES:

9 Q. With respect to the signs that are in the
10 town of Elkader, if someone is driving down the
11 highway there where your car was when you took
12 these photographs, are those signs visible in the
13 sense you can read them?

14 A. No.

15 Q. At my request did you actually get out
16 and measure the letters on the signs that are in
17 Gilbertville?

18 A. On some of them.

19 Q. And at my request did you take your van
20 and a video camera and make a videotape?

21 A. Yes, we did.

22 MR. HOLMES: We'd like to play this
23 videotape.

24 THE ADMINISTRATIVE LAW JUDGE: That would
25 be fine.

1 MR. HOLMES: It is four minutes.

2 MR. HUNACEK: I have no objection.

3 THE ADMINISTRATIVE LAW JUDGE: Okay.

4 MR. HOLMES: Shall I mark the videotape
5 Exhibit 15?

6 THE ADMINISTRATIVE LAW JUDGE: Fifteen,
7 please.

8 MR. HUNACEK: Are you planning to
9 introduce the videotape into evidence?

10 MR. HOLMES: Yes.

11 MR. HUNACEK: Does the videotape have
12 narration on it?

13 MR. HOLMES: Yes, and he's the narrator.
14 Basically it's the narration as to the effect of
15 "I'm driving in this direction and I've got the
16 camera pointed such a way," but there's no
17 editorializing about what it shows.

18 MR. HUNACEK: Okay.

19 THE ADMINISTRATIVE LAW JUDGE: Mr. Holmes,
20 I believe there's an outlet right below the table
21 also. That might be the easiest.

22 MR. HOLMES: Okay.

23 MR. HUNACEK: Off the record.

24 (Discussion off the record.)

25 THE ADMINISTRATIVE LAW JUDGE: Back on

1 the record.

2 MR. HOLMES: Do I need to offer this
3 before or after?

4 THE ADMINISTRATIVE LAW JUDGE: Why don't
5 you show it and then offer it.

6 MR. HOLMES: Okay.

7 MR. HUNACEK: Now that we're back on the
8 record, Judge, maybe this would be an appropriate
9 time to say that your record doesn't have all the
10 packets of sign notices. You've given us a list
11 of the ones you do have and we've agreed to keep
12 the record open for the introduction of the
13 documents for the ones you don't have.

14 THE ADMINISTRATIVE LAW JUDGE: And
15 anything that I don't have you were going to send
16 a copy to Mr. Holmes also?

17 MR. HUNACEK: That's correct.

18 THE ADMINISTRATIVE LAW JUDGE: So Mr.
19 Holmes has all the notices.

20 MR. HOLMES: That's fine.

21 (Viewing the videotape, Appellant's
22 Exhibit 15.)

23 THE ADMINISTRATIVE LAW JUDGE: Mr. Hunacek,
24 any objection to Exhibit 15 being admitted into
25 the record?

1 MR. HUNACEK: No.

2 THE ADMINISTRATIVE LAW JUDGE: Exhibit 15
3 is admitted into the record.

4 (Appellant's Exhibit No. 15
5 was received in evidence.)

6 BY MR. HOLMES:

7 Q. Mr. Becker, was that you we heard in the
8 film?

9 A. Yes, it was.

10 Q. And when did you take these?

11 A. Oh, approximately two and a half weeks
12 ago.

13 Q. When you drive past this pair of fields
14 and your eyes are on the road, can you read these
15 signs on the left?

16 A. No.

17 Q. If you are coming in from out of town,
18 coming in from the north and you go past the curve
19 and you are driving down the road and you have
20 your eyes on the road, can you see the signs on
21 the right?

22 A. No.

23 Q. If you're in town and you're going out of
24 town and you're headed west, you go past these
25 fields and you take your eyes off the road and you

1 look over at these signs, can you read all of
2 them?

3 A. No.

4 Q. If you are driving out of town and you
5 take your eyes off the road and look over at the
6 left and you try to pick out a sign, just one sign
7 all by itself and read just one sign, can you read
8 it?

9 A. Maybe.

10 Q. What's it depend on?

11 A. The weather, for one thing.

12 Q. Assume it is clear weather.

13 A. How fast you were going and if you want
14 to have an accident or not by looking at the signs
15 instead of at the road.

16 Q. Okay. Let's suppose you're not worried
17 about having an accident and you're going to try
18 and focus on a sign. Can you read every one of
19 them?

20 A. No.

21 Q. Which ones can you read?

22 A. The one that would have the large
23 lettering.

24 Q. Okay.

25 A. Possibly.

1 Q. Well, which one?

2 A. On the softball field?

3 Q. Yes.

4 A. As you're leaving, it would be the left
5 field fence of the softball field. I would say
6 the Waterloo Implement sign would probably be--if
7 you could read any, that would be the one you
8 could probably pick out to read with the largest
9 distinct letters.

10 Q. Okay. How about the fields--the signs
11 that are on the right field of the softball; can
12 you read those?

13 A. I would say no.

14 Q. And let's come the other way now.
15 Suppose you've been to the north and you're
16 coming into town and you're going to go around the
17 curve and you're going to look off to the right
18 now at the baseball field.

19 A. Okay.

20 Q. Can you read the ones that are on the
21 right field fence?

22 A. No.

23 Q. Can you read the ones on the left field
24 fence?

25 A. No.

1 Q. They are too far away?

2 A. Yes, sir.

3 Q. Okay. The right field fence on the
4 baseball diamond from the center of the road is
5 about 467 feet; is that right?

6 A. If you're looking at it perpendicular?

7 Q. Yes.

8 A. Yes.

9 Q. There was one point in the film when
10 you're on the curve that even though you're
11 looking straight ahead you could sort of see those
12 signs up ahead; is that right?

13 A. Yes.

14 Q. And we marked that as point A on Exhibit
15 13; is that right?

16 A. Yes, sir.

17 Q. And then I asked you to measure the
18 distances from that point to both fences; is that
19 right?

20 A. To a certain spot on each fence is what I
21 did.

22 Q. Yes.

23 A. Not to each and every sign.

24 Q. Yes. But sort of to the middle of each
25 fence?

1 A. Yes.

2 Q. And so it is 670 feet to the right field
3 fence and 681 feet to the left field fence?

4 A. That's correct.

5 Q. In your experience of driving by and
6 doing this a number of times at my request, are
7 any of these signs really in full view as you're
8 driving on the highway?

9 A. No.

10 Q. Are any of these signs readily seen as
11 you're driving on the highway?

12 A. No.

13 MR. HOLMES: That's all the questions.

14 THE ADMINISTRATIVE LAW JUDGE: Cross-
15 examination, Mr. Hunacek?

16 MR. HUNACEK: Thank you.

17 CROSS-EXAMINATION

18 BY MR. HUNACEK:

19 Q. Good morning, Mr. Becker.

20 A. Good morning.

21 Q. You just said a second ago that the signs
22 are not in full view and readily visible from the
23 highway, readily seen, I think was your phrase; is
24 that right?

25 A. By readily seen, I would say you would

1 not be able to read them.

2 Q. But if somebody were to stop their car on
3 the highway and get out of the car and look at the
4 signs, would they be able to make them out?

5 A. A few.

6 Q. Would they be able to observe that those
7 are signs that are advertising something?

8 A. I would assume so.

9 Q. The signs themselves would be visible
10 from the highway if you were standing on the
11 highway looking at them, isn't that correct?

12 A. If you were stopped.

13 Q. Okay. Now, I drew-- Well, before I get
14 to that, in that videotape that was introduced
15 into evidence, the first part of the videotape you
16 were aiming the camera where the driver's eyes
17 would be, isn't that right, on the road?

18 A. That's correct.

19 Q. Now, I drew a very rough hypothetical
20 sketch here, and I'm not going to even introduce
21 that into evidence, but you can see I drew a line
22 that I marked "highway" and then I drew another
23 line that I marked "sign" and the two lines are
24 meant to be parallel with one another.

25 A. Okay.

1 Q. Okay. Now, if someone were driving along
2 that highway in the direction of the highway and
3 the driver were looking straight ahead--

4 A. Driving this way or--

5 Q. Either way.

6 A. Either way.

7 Q. And the driver were looking straight
8 ahead, then probably that driver would not see the
9 message on the that sign, isn't that right?

10 A. The sign back here?

11 Q. Yes.

12 A. No.

13 Q. Because that sign is parallel to the
14 highway?

15 A. Correct.

16 Q. And if you're looking straight ahead, you
17 just completely missed the sign?

18 A. Yes.

19 Q. But if somebody were in the car looking
20 out the side window, for example, then that person
21 would see the sign, right?

22 A. If he would look over that way.

23 Q. Sure. Right. That sign would be visible
24 from the highway, isn't that correct?

25 A. Not readable.

1 Q. Why do you say that?

2 A. Because he wouldn't be able to read it.
3 You're going too fast. If you are going at the
4 regular speed limit, you are going too fast to
5 read the signs.

6 Q. So that's true probably of most signs you
7 see along the interstate. If you are whizzing
8 along at 50 miles an hour, you probably don't have
9 time to sit there and look at a sign and read
10 every word on it, isn't that right?

11 A. I'm usually driving.

12 Q. Okay. And as you're driving, you're
13 usually looking at things like the road so you
14 don't typically sit there and read the words off
15 every sign that you pass?

16 A. That's what I try to do.

17 Q. Because if you did read the words off the
18 signs as you passed them, you might have an
19 accident.

20 A. Yes, sir. That's my intent, not have an
21 accident.

22 Q. And that's why you trained yourself not
23 to read the signs--

24 A. As a driver.

25 Q. --because they are distracting?

1 A. No.

2 Q. Well, you just said--

3 A. My eyes are focused on the road.

4 Q. And the signs, if you read them, could
5 cause an accident?

6 A. Yes.

7 Q. I'm not asking you to give me any
8 specifics of accidents that you may know, but as a
9 person who's been driving for a number of years,
10 you know that distractions can cause accidents?

11 A. Yes.

12 Q. And if you saw a sign like that and you
13 turned your head to look at it, for example, say,
14 "Hey, what's on that sign," that second that you
15 turned your head to look at it, your attention
16 would not be on the road and that could at least
17 rationally be thought of as something that could
18 cause an accident, isn't that right?

19 A. I would say so.

20 Q. Okay. Now, if a person did put a sign up
21 parallel to a highway the way I've sketched it in
22 this diagram, that would certainly be considered
23 advertising in your mind, wouldn't it?

24 A. Depends upon the size.

25 Q. Let's say a reasonable size. Say a 4 by

1 8 sign. Say there was a 4 by 8 sign 100 feet from
2 the highway and parallel to it and had a big
3 picture of, say, a can of Coca-Cola. That would
4 certainly fit your definition of advertising,
5 wouldn't it?

6 A. I guess so.

7 Q. The reason they put that sign there is
8 because they want people to see it, right?

9 A. Along the road.

10 Q. Okay.

11 A. If they put it along the road.

12 Q. Now, you testified in your testimony that
13 the school gets money from people who pay to put
14 up their signs on the fence of the softball field
15 and baseball field?

16 A. As a booster activity, to help promote
17 the booster club.

18 Q. And the way they promote it--well, but
19 they don't put up a blank sign. If Coca-Cola, for
20 example, is paying money to put up a sign, they
21 are certainly being public spirited in helping the
22 booster club, but also deriving some benefit from
23 having some people see the sign that says
24 Coca-Cola and people say, "Gee, Coca-Cola supports
25 the booster club. That's real nice of them."

1 A. But our intent on these signs is for the
2 people who attend the games to read the signs
3 while they are watching the games, when they are
4 in between innings and in between games. That was
5 our original intent.

6 Q. So people on the bleachers then can see
7 the signs and make them out?

8 A. To be honest with you, on the baseball
9 field, you can't really read all the signs from
10 the bleachers. You have to look at them very
11 closely because of the different size of the
12 letters.

13 Q. Okay. So when you say they can't read
14 all the signs, are you saying they can't
15 necessarily read every single word that appears on
16 the sign?

17 A. I would say that, yes.

18 Q. But they might be able to pick out a
19 couple words that identifies the sponsor or
20 booster?

21 A. Probably.

22 Q. Okay. Now, if you are sitting on the
23 bleachers, how far are you from the signs on the
24 fence?

25 A. On which field?

1 Q. Let's say the baseball field. Do you
2 have that marked in your diagram?

3 A. Like I said, if you look at the top where
4 it says baseball home plate, where it has that
5 diagram on the home plate on the baseball field--

6 Q. Would that be the one on the right?

7 A. The one on the right, yes, sir. Home
8 plate to center field is roughly 370 feet. And to
9 right center and left center where the signs are
10 you see the different length field markings. So
11 you probably have from home plate to the back stop
12 fence would be another, I'd say, roughly 20 to 25
13 feet. I didn't step that off. And then the
14 bleachers are outside that area probably another
15 15 to 20 feet, so if you're looking at, say, the
16 left center marked C, you take home plate to left
17 center would be 335 and add another 50 to 70 feet
18 from home plate to where the bleachers are and
19 then you have different lengths of the bleachers.
20 I mean you're--each row of bleachers is another
21 three foot away.

22 Q. So when Mr. Westvold said the distance
23 from the bleachers to the sign is roughly
24 comparable to the distance from the highway to the
25 sign, your diagrams confirm that, isn't that

1 correct? Roughly three, four hundred feet?

2 A. From the-- I want to make sure I get the
3 question right.

4 Q. And I'm not trying to confuse you.

5 A. Okay.

6 Q. If Mr. Westvold testified in his direct
7 examination that if you're sitting in the
8 bleachers and looking at the signs, that's roughly
9 the same distance as if you're sitting on the
10 highway looking at the signs.

11 A. Well, depends on where you are at on the
12 highway, at point A or point F or--

13 Q. Sure. There are some points on the
14 highway closer than others?

15 A. Yes, sir.

16 Q. But let's say you are at the closest
17 point on the highway.

18 A. So you're saying the perpendicular point
19 F?

20 Q. Right.

21 A. There it shows F to D would be 477 feet,
22 and if you're going from point A--or going from
23 the bleachers, we figured it would be roughly 390
24 feet.

25 Q. Okay.

1 A. In that neighborhood.

2 Q. So it's about an 80-foot difference?

3 A. Roughly, yes.

4 MR. HUNACEK: Okay. I don't believe I
5 have any more questions. Thank you.

6 THE ADMINISTRATIVE LAW JUDGE: Redirect,
7 Mr. Holmes?

8 MR. HOLMES: None.

9 (Witness excused.)

10 THE ADMINISTRATIVE LAW JUDGE: Any
11 further evidence, Mr. Holmes?

12 MR. HOLMES: No.

13 THE ADMINISTRATIVE LAW JUDGE: Okay. I
14 think I'd like very short briefs on this and
15 closing arguments to be written. Would 30 days be
16 sufficient? We're not going to have reply briefs,
17 just each side submit a brief.

18 MR. HOLMES: My wife's mother is quite
19 ill, we just found out. I have to take her to
20 Arizona. I'm going to be gone two weeks. I'd
21 like another two weeks.

22 THE ADMINISTRATIVE LAW JUDGE: Okay.
23 Forty-five days from today?

24 MR. HOLMES: Be fine.

25 THE ADMINISTRATIVE LAW JUDGE: Mr. Hunacek?

1 MR. HUNACEK: That's fine.

2 THE ADMINISTRATIVE LAW JUDGE: Let's see.

3 MR. HUNACEK: And needless to say, if
4 there are medical emergencies that prevent Mr.
5 Holmes from getting his brief in on time, I'll
6 consent in advance to a reasonable extension.

7 THE ADMINISTRATIVE LAW JUDGE: How
8 about--does anybody have a calendar? I think
9 January 29th might be a Monday.

10 MR. HOLMES: Let's see. You're right.

11 THE ADMINISTRATIVE LAW JUDGE: We will
12 say 4:30 on January 29th.

13 MR. HUNACEK: You mean that you have to
14 have it in your possession at that time?

15 THE ADMINISTRATIVE LAW JUDGE: Right.
16 And it can be faxed. A copy can be faxed by 4:30
17 and then a hard copy to follow. So 4:30, final
18 brief and argument. And then, Mr. Westvold, you
19 will get me the copies of the--

20 MR. WESTVOLD: Yes.

21 MR. HUNACEK: We don't need this on the
22 record.

23 (Proceedings concluded at 10:35 a.m.)

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C E R T I F I C A T E

I, the undersigned, a Certified Shorthand Reporter of the State of Iowa, do hereby certify that I acted as the official court reporter at the hearing in the above-entitled matter at the time and place indicated.

That I took in shorthand all of the proceedings had at the said time and place, and that said shorthand notes were reduced to typewriting under my direction and supervision, and that the foregoing typewritten pages are a full and complete transcript of the shorthand notes so taken.

Dated at Des Moines, Iowa, this 20th day of December, 2000.

Kathryn Powers
CERTIFIED SHORTHAND REPORTER

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