



Planning & Development Services

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April 16, 2009

Mr. Neal T. Pascoe
Planning Consultant
Beus Gilbert
4800 North Scottsdale Road
Suite 600
Scottsdale, AZ 85251-7616

Re: Request for Interpretation - Scottsdale Quarter Signage

Dear Mr. Pascoe:

I am in receipt of your letter to Connie Padian requesting an interpretation of the definition of a sign as it relates to the Scottsdale Quarter project located at the northeast corner of Scottsdale and Butherus Roads. As the current Zoning Administrator, I have reviewed the information presented and will be responding to this request.

The cause for this interpretation is the definitions for signs in the City of Scottsdale Zoning Ordinance as related to the classification of the "Graphic Identification Panels" proposed on the parking garages at Scottsdale Quarter.

A brief history of the Scottsdale Quarter Signage is outlined below.

August 2007 (10-DR-2007): Development Review Board approval of the master plans for the project and the building elevations for Phase I. The building elevations approved under this case included the incorporation of "wall art panels" into the design of parking structures E and J. It was stipulated with this case that the applicant work with staff to determine appropriate restrictions on the subject matter of these panels.

April 2008 (540-SA-2007): Staff Approval of the content of the "wall art panels" as stipulated and conceptually approved under 10-DR-2007. This staff approval limited the content of the panels to images of the Sonoran Desert flora and permitted no advertising, products or lifestyle images. The "art panels" that are currently up on the buildings on Butherus Road and Greenway-Hayden Loop are in conformance with this approval.

December 2008 (3-MS-2008): Development Review Board approval of the Master Sign Program for Scottsdale Quarter, which included the new sign types as approved under 6-TA-2008. The sign program did not include the use of Graphic Identification Panels.

The Zoning Ordinance defines a sign in both Section 3.100 and 8.200:

3.100 Sign:

a. Any device for visual communication that is used for the purpose of bringing the subject thereof to the attention of the public, but not including any flag, badge or insignia of any local, state or United States governmental agency, or of any civic, charitable, religious, patriotic, fraternal or similar organization.

b. The term "sign" shall mean and include any display of any letter, numeral, figure, emblem, picture, outline, character, spectacle, delineation, announcement or anything in part or in combination by any means whereby the same are made visible to the eye and for the purpose of attracting attention outdoors to make anything known, whether such display be made on, attached to or as a part of a structure erected for the purpose, or on, attached to or as a part of any other structure, surface or thing, including but not limited to, the ground or any rock, tree or other natural object, which display is visible beyond the boundaries of the lot or parcel of property on or over which the same is made.

8.200 Sign. Any device for visual communication which is used or is intended to attract the attention of the public, when the display of this device is visible beyond the boundaries of the public or private property upon which the display is made.

The requirements for the sign ordinance apply to the exterior of buildings, which have the potential to be visible to the public. The requirements have not been applied to the interior of buildings or to exterior courtyards that are completely enclosed by structures.

The Scottsdale Quarter project is a 28.6 acre site comprised of individual buildings accessed from internal private streets. The applicant's request is to treat the Scottsdale Quarter project like one interior building and to allow devices for visual communication on the exterior building walls which do not front onto the public streets and on the portions of the exterior building walls which are not visible beyond the boundaries of the property. These devices are intended to showcase businesses and products associated with Scottsdale Quarter.

The zoning ordinance does not give guidance on how to determine which portions, if any, portions of the exterior walls are not visible beyond the boundaries of public or private property. The visibility of a device would be dependent on the width and depth of the view corridor down the private streets. If one was to apply a conservative view analysis, a small portion of the walls in the most interior of the site may not be visible beyond the boundaries of the property.

If the device is not considered a sign, then it is classified as an architectural treatment and is subject to the review and approval of the Development Review Board. The Board would have the authority to review the design, color, placement of each device.

The Board would also have the authority to determine where the devices could be placed on the site and not be visible beyond the boundaries of the property. If the intent is to rotate the device periodically, the Board would also have the authority to review each version of the device.

The zoning ordinance did not assume the new typology of mixed use complexes – those developed utilizing private streets. Such complexes may subdivide in the future, at which time the sign regulations could apply to all exterior faces of the buildings. At this time the entire Scottsdale Quarter site is under single ownership; however, the city has received development applications for the eastern third of the site which would be split off and sold to other parties. The remainder of the site has the potential to also be further subdivided.

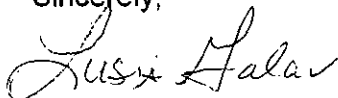
The ordinance also specifies when a sign requires a permit. As noted in Section 8.303 a permit is not required for a sign that is "...not visible from off public or private property or business". The section also requires that while a permit may not be required for signs not visible off public property, "...such signs shall be subject to any and all applicable provisions of this ordinance, including Development Review Board approval, or approval by the general manager."

Based on discussions with city staff and the applicant team and a graphic (attached) indicating proposed sign placement the following determination is made:

1. The proposed "Graphic Identification Panels" to be placed on the inside façade of Buildings E and J are considered to be architectural treatments and not signs as defined in the Zoning Ordinance
2. These panels are considered architectural treatments because they will not be visible beyond the boundaries of the parcel of property as currently configured under single ownership.
3. In the event, that portions of the Scottsdale Quarter project are sold to different owners, the location of the "Graphic Identification Panels" will have to be reviewed and adjusted to continue conformance with the Zoning Ordinance and not be considered signage.
4. As architectural treatments, the panels require review and approval from the Development Review Board as to location and design features only.
5. Placement of the Graphic Identification Panels will also require field verification by city staff to insure adherence to the DRB approved plans.

This determination is applicable to the Scottsdale Quarter project based on the preliminary proposal as shown on the attached graphic. As stated above, DRB approval is required. Please contact Bryan Cluff, Planner at 480-312-2258 for application requirements.

Sincerely,

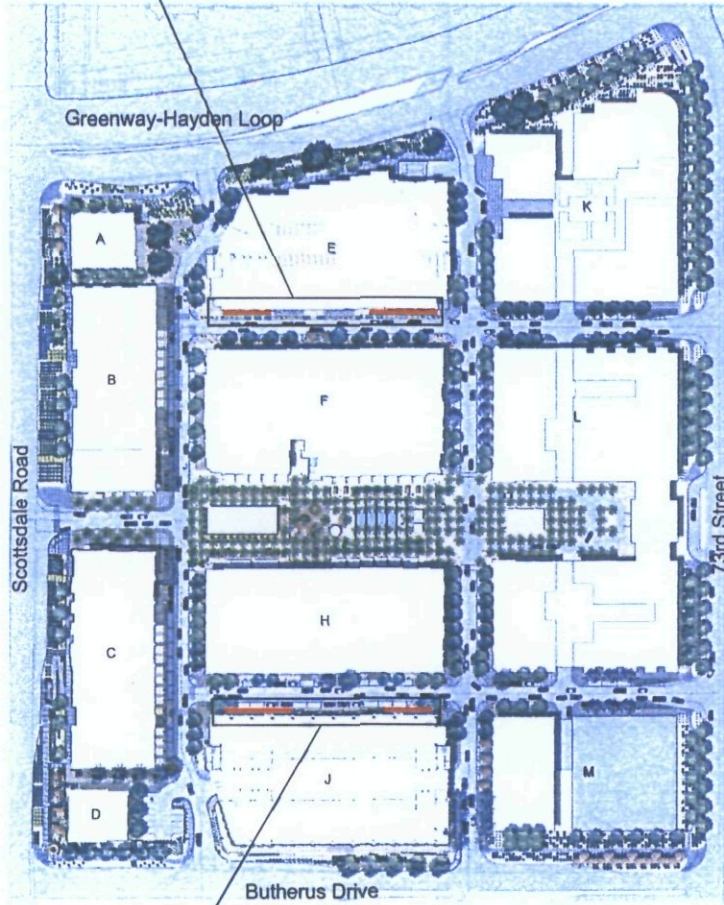


Lusia Galav, AICP
Director, Current Planning/Zoning Administrator

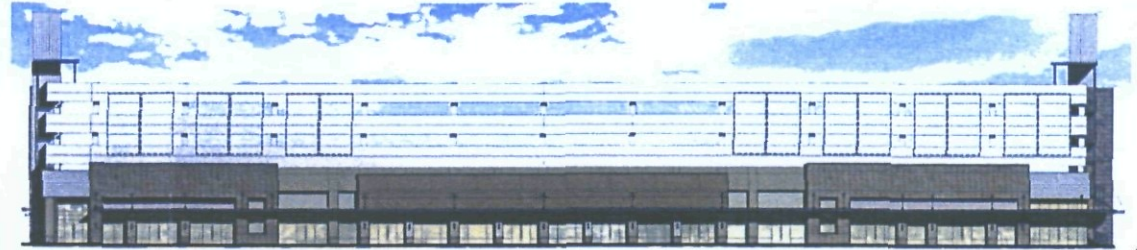
Enclosure

Scottsdale Quarter

Building E - Fourteen (14) Graphic Panels
(20' x 10' each)

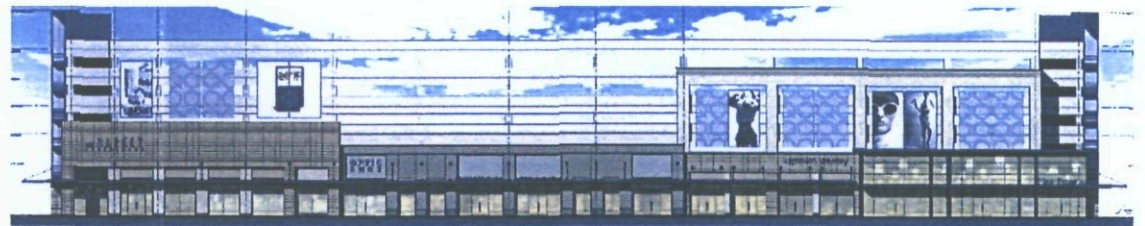


Building J - Thirteen (13) Graphic Panels
(20' x 10' each)



Building E—South Elevation

Fourteen (14) Graphic Identification Panels



Building J—North Elevation

Thirteen (13) Graphic Identification Panels

BEUS GILBERT

PLLC

ATTORNEYS AT LAW

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PAUL E. GILBERT
DIRECT (480) 429-3002

EMAIL: PGILBERT@BEUSGILBERT.COM

40081-005

14 November 2008

VIA EMAIL AND U.S. MAIL

Connie Padian
Chief Planning & Administrative Officer
City of Scottsdale Planning & Development Services
7337 E. Indian School Road, Suite 105
Scottsdale, AZ 85251

Re: Request for Interpretation – Definition of Sign

Dear Ms. Padian:

Initially may I use the opportunity of this correspondence to thank you for your constructive remarks during our recent Planning Commission hearing this week dealing with the Glimcher Scottsdale Corridor sign amendment application. By and large we were quite pleased at the reception given to this application by the Planning Commission.

We understand this matter is now set to be heard by the Scottsdale City Council on December 2, 2008. This early date triggers this correspondence as a follow-up to Neal Pascoe's earlier letter to you of October 13, 2008 requesting an interpretation with regard to certain signs. We would appreciate hearing from you with regard to the status of this request for interpretation.

Thank you for your kind consideration of this request. An additional copy of Neal's letter of October 13, 2008 is attached for your convenience.

Very truly,

BEUS GILBERT PLLC



Paul E. Gilbert

PEG/dmw
Enclosure

BEUS GILBERT

PLLC

ATTORNEYS AT LAW

4800 NORTH SCOTTSDALE ROAD
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SCOTTSDALE, ARIZONA 85251-7616
(480) 429-3000
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40081-0005

October 13, 2008

Via E-Mail & U.S. Mail

Connie Padian
Chief Planning & Administrative Officer
City of Scottsdale Planning & Development Services
7447 E. Indian School Rd., Suite 105
Scottsdale, AZ 85251

Re: Request for Interpretation – Definition of Sign

Dear Ms. Padian:

I am writing to request an interpretation of the City of Scottsdale Zoning Ordinance, § 8.200, and the definition of a sign as this relates to the Scottsdale Quarter Project located at the northeast corner of Scottsdale and Butherus roads. A copy of the Project Site Plan is attached for your information.

The word “sign” is defined as follows: “Any device for visual communication which is used or is intended to attract the attention of the public, when the display of this device is visible beyond the boundaries of the public or private property upon which the display is made.” There are three (3) separate elements contained in this definition, all of which must be present in order to meet this definition.

A “device for visual communication” could mean almost anything visible, but we do not question that part of the definition. We acknowledge that our proposal includes devices used for visual communication.

The next two elements we do not believe apply to our site. In order to understand what “attracting the attention of the public” means, there must necessarily be an understanding of what the “public” is. While there are numerous different definitions of public, analyzing the term in the context of signs and historic practice in Scottsdale, “devices for visual communication” that are located within a building such that they may not be seen from outside the building have not been considered signs even though the public is freely able to enter the building. In other words, persons who have chosen to be within a particular building may be exposed to devices for visual communication without these devices being considered signs unless they are also visible to public passers by. Persons on an adjacent street were considered to be the public, while persons on the building site were not.

In the case of a multiple tenant commercial building, persons within the project were not considered to be the public. That is, persons observing a visual communication device on their way from one business to another within the same complex have not been considered to be the public. Thus, one who has chosen to be within a multiple tenant commercial building may be exposed to visual communication devices without the devices being considered signs. In the case of the Scottsdale Quarter, visual communication devices should not be considered signs if they would only be seen by guests or shoppers within the complex regardless of which tenant or tenants these customers intended to visit. Persons in the Borgata, or an enclosed mall, will walk past any number of devices for visual communication, without these devices being considered signs, and Scottsdale Quarter should not be treated differently.

The third and final test is that the visual communication device must be visible beyond the property upon which the display is made. In the case of the Scottsdale Quarter there is a single parcel bounded on the north by Greenway-Hayden Parkway, on west by Scottsdale Road, on the east by Phase 3 of the project, and on the south by Butherus Road. A visual communication device in Scottsdale Quarter that would be visible to persons on any of these streets would clearly be visible beyond the boundaries of the property upon which the display is made and such persons would be considered to be the public in the context of the definition of "sign." However, there are buildings around the perimeter on the north, west, and south that block views into the interior of the site.

While these buildings are not continuous, the openings between them are narrow and deep so that there are no views into the interior. From these directions devices for visual communication within the interior would not be visible to the public and would not be visible off-site. Along the east side will be Phase 3, which will contain ground floor retail along its length. Although a separate parcel, these shops are an integral part of the multi-tenant complex, patronized by the same guests and shoppers. There is no public presence until the easterly boundary of Scottsdale Quarter, which is Dial Boulevard. As with the other sides of the development, the view corridors are both narrow and deep, so there will be no visibility from the east.

As stated at the outset, three elements must be present for a thing to be considered a sign. In the case of Scottsdale Quarter, the interior sides of the buildings do not meet this definition. Therefore, we request a finding that devices for visual communication within the interior of Scottsdale are not signs.

Connie Padian
October 13, 2008
Page 3

Sincerely,

BEUS GILBERT PLLC



Neal T. Pascoe
Planning Consultant

NTP:kls/ich
Enclosure

cc: Margo Conley-Eakins (w/enclosure, via e-mail)
Paul Gilbert (w/enclosure, via e-mail)
George Melara (w/enclosure, via e-mail)

Cause for Interpretation: Request by property owner to clarify the definition of a sign

The Zoning Ordinance defines a sign as

Specifying when the sign regulations apply (and permits required) between signs on the exterior of a building and those interior to a building.

When interior or within an enclosed courtyard (roofed or not) no sign permit required nor limitations on size, design, etc.

On the exterior, sign regulations are required. Ordinance does not have flexibility to consider all possible site configurations and ownership patterns. Instead is limited to building configurations.

Did not assume new typology of individual buildings with private streets. Such complexes may subdivide in the future – sign regulations would then apply. Nor can these regulations consider phasing of projects. In initial phases signs may be visible and in the future may not be.

AGENDA

MAJOR PROJECT EXEC REVIEW TEAM
WEDNESDAY, MARCH 4, 2009
10:00AM – 12NOON
KIVA CONFERENCE ROOM



<u>ITEM</u>	<u>SPONSOR</u>	<u>SUGGESTED TIME</u>
Space Utilization	Worth/Coltman	1 Hour
Revised Downtown Plan Implementation Programming - Review and Discussion	Galav/Perreault	1 Hour

Future Agenda Items

Noise Regulations

Policy Feedback on Neighborhood /Downtown
Business Relationship Mgt Plan

Keagy

General Plan 2011 Update Process

Richert/Galav

*process
Boards/Commissions
CC reports
quarterly reporting*

Smart Growth Scorecard

Padian

Pending – Liability Reqs Related to
Vendor w/Special Events

Clifford/Hecker

Briefing on Capella Proposal
(Pinnacle Peak Patio)

Hadder