

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**ROBERT PETERSON and LEIBUNDGUTH)
STORAGE & VAN SERVICE, INC.)**

Plaintiffs,)

v.)

**VILLAGE OF DOWNERS GROVE, ILLINOIS,)
an Illinois municipal corporation)**

Defendant.)

Case No. 14-cv-9851

VERIFIED FIRST AMENDED COMPLAINT

1. Leibundguth Storage & Van Service, Inc. (“Leibundguth”), which has existed in Downers Grove, Illinois since 1928, has had a sign painted on the back of its brick building advertising its business to train passengers for over 70 years, as the photo below shows. This sign is crucial to Leibundguth’s business, as thousands of Metra rail commuter passengers see the sign every day. Customers who find Leibundguth because of this sign make up a significant portion of its business.



2. No one has ever complained about the sign to Plaintiffs, nor, upon information and belief, to Downers Grove (the “Village”). But now the Village is trying to force Plaintiffs to paint over the sign because it does not comply with the Village’s sign ordinance, as amended in 2005, which, with some exceptions that do not apply to Plaintiffs, prohibits signs that do not face a roadway, signs painted directly on a wall of a building except in certain zoning districts, and signs over a certain aggregate size.

3. The Village’s sign ordinance deprives Plaintiffs of their right to free speech under the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution. Plaintiffs ask this Court to declare the sign ordinance provisions at issue unconstitutional and preliminarily and permanently enjoin enforcement of those provisions of the sign ordinance.

JURISDICTION AND VENUE

4. This action arises under the First and Fourteenth Amendments to the United States Constitution, 42 U.S.C. §§ 1983, 1988, and Article I, Section 4 of the Illinois Constitution. Plaintiffs seek injunctive and declaratory relief against the enforcement of the challenged portions of the Village’s sign ordinance, which violate Plaintiffs’ free speech rights on their face and as applied.

5. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1343, and 2201. The state law claims are so closely related to the federal claims as to create supplemental jurisdiction under 28 U.S.C. § 1367(a).

6. This Court is authorized to grant Plaintiffs' prayer for declaratory judgment under 28 U.S.C. §§ 2201 and 2202, Federal Rule of Civil Procedure 57 and 740 ILCS 23/5(b).

7. This Court is authorized to grant Plaintiffs' prayer for injunctive relief under 42 U.S.C. § 1983, Federal Rule of Civil Procedure 65 and 740 ILCS 23/5(b).

8. This Court is authorized to award Plaintiffs' attorneys' fees and costs under 42 U.S.C. § 1988 and 740 ILCS 23/5(c).

9. Venue is proper in this district under 28 U.S.C. § 1391(b) because the events giving rise to Plaintiffs' claims occurred within the district and because Defendant is located in this district.

PARTIES

10. Plaintiff Robert Peterson is a lifetime resident of Downers Grove, Illinois, Vietnam veteran, former firefighter, and the sole owner of Leibundguth. Mr. Peterson became part owner of Leibundguth in 1971 and sole owner in 1985.

11. Leibundguth is an Illinois corporation located in Downers Grove, Illinois, that provides moving and storage services for its customers. The business began in 1928 and was incorporated in 1965.

12. The Village of Downers Grove is an Illinois municipal corporation located in DuPage County, Illinois.

STATEMENT OF FACTS

13. Leibundguth was founded in 1928 by Earl Leibundguth as a sand, gravel and building materials company. It obtained a license for moving household goods in 1930 and became a moving and storage company.

14. For approximately 80 years, Leibundguth has been located at 1301 Warren Avenue in Downers Grove, which is adjacent to the Metra commuter train tracks ("Metra"). Earl Leibundguth purchased the property and built the brick warehouse in which the business still operates.

15. In the mid-1950s, Earl Leibundguth's brother, Edward Leibundguth, became co-owner of the business. Plaintiff Robert Peterson bought all of Earl Leibundguth's shares and became co-owner with Edward Leibundguth in approximately 1971. Mr. Peterson became sole owner in 1985 after Edward Leibundguth's death.

Leibundguth's Signs

16. The back of Leibundguth's building facing the Metra has a sign painted directly on it, with a white background and the words "Leibundguth Storage and Van Service," its phone number, and the words "Wheaton World Wide Movers," with which Leibundguth contracts for long-distance moving, as pictured above. The sign is approximately 40 feet long and 10 feet high, a total of 400 square feet, and has been on the building for over 70 years (with maintenance and minor alteration).

17. The sign on the back of Leibundguth's building is not visible to drivers on any roadway. It is visible only to the thousands of Metra commuter train passengers who travel past it every day.

18. The sign on the back of the building is crucial to Leibundguth's business because it makes potential customers riding the Metra aware of the business. According to Mr. Peterson, approximately 12 to 15 people per month who call seeking Leibundguth's services state that they learned about the business because of the sign facing the Metra. Based on this, Mr. Peterson estimates that Leibundguth generates between \$40,000 and \$60,000 per year in revenue from the sign facing the Metra, the equivalent of approximately 15 to 20 percent of revenue.

19. The front of the building also has a sign painted directly on the brick, with a white background and the words "Leibundguth Storage and Van Service" and its phone number, as shown below. That sign is 40 feet long and 2 feet high, for a total of 80 square feet. That sign, too, has existed on the building for over 70 years.



20. The other side of the front of the building bears a sign with red and white hand-painted block letters spelling out “Leibundguth Storage & Van Service,” as shown below. That sign has been on the front of the building since before Mr. Peterson became an owner in 1971. It is 19 feet long by 2 feet high, for a total of 38 square feet.

21. Also on the front of the building, directly under the sign with block letters, is a smaller sign advertising Leibundguth’s relationship with Wheaton World Wide Movers, as shown below. That sign is 7 feet long by 4 feet high, for a total of 28 square feet. Mr. Peterson posted the Wheaton sign in 1987, replacing an almost identical sign that bore the company’s former name, Wheaton Van Lines, which had been in place since the mid-1970s.



22. The signs on the front of the building are important to identify the business to passersby and potential customers. The Wheaton sign is important to the business because it identifies Leibundguth’s relationship with a well-known

long-distance moving service that Leibundguth can provide to its customers. These four signs are the only signs on the property that identify and advertise the business.

23. All four of Plaintiffs' signs are truthful and not misleading. The signs communicate only the name of the business, the telephone number of the business, and Leibundguth's relationship with Wheaton World Wide Movers.

24. All four of Plaintiffs' signs advertise a lawful activity – moving and storage – for which Leibundguth is licensed.

25. No one has ever complained to Plaintiffs or, on information and belief, to the Village about any of the signs on the building based on safety, aesthetics, or any other reason.

The Sign Ordinance

26. On May 3, 2005, the Downers Grove Village Council adopted an amendment to the Village's sign ordinance, attached as **Exhibit A**, which reduced the size and amount of signage permitted and prohibited certain types of signs in Downers Grove.

27. The stated purpose of the sign restrictions is to create “a comprehensive but balanced system of sign regulations to promote effective communication and to prevent placement of signs that are potentially harmful to motorized and non-motorized traffic safety, property values, business opportunities and community appearance.” Sec. 9.010(A).

Signs Painted Directly on a Wall, Roof, or Fence Prohibited

28. The ordinance prohibits “any sign painted directly on a wall” except, without explanation, in the Downtown Business (DB), Downtown Transitional (DT), and Fairview concentrated business districts.” Sec. 9.020(P).

29. The sign ordinance prohibits Plaintiffs’ signs hand-painted directly on the front and back walls of the building, which is located in the Light Manufacturing zone (M1) one block away from the Downtown Business zone.

Wall Signs Facing the Metra Commuter Rail Tracks Prohibited

30. The ordinance permits each business or property owner to display one wall sign (not painted directly on a wall, roof, or fence), which must face a public roadway or drivable right-of-way. Sec. 9.050(C).

31. “Public roadway or drivable right-of-way” is not defined in the sign ordinance, but the Village has concluded that it does not include the Metra tracks. (See Zoning Board of Appeals Staff Report, attached as **Exhibit B** and Minutes of Village Council meetings, attached as **Exhibit C**.) Therefore, the ordinance does not permit a sign that faces the Metra if that same sign does not also face a roadway. As a result, the ordinance bans the sign on the back of Leibundguth’s building because it faces only the Metra and not a roadway.

32. The sign ordinance does not require any types of signs other than wall signs to be displayed “along a public roadway or drivable right-of-way.” Sec. 9.050. Thus, monument signs, projecting signs, and window signs may all face the Metra without having to also face a roadway.

Exceptions to Limitations on the Number of Signs

33. Although the sign ordinance limits a property to one wall sign, Sec. 9.050(C)(1), upon information and belief, the Village has allowed some businesses in Downers Grove to have more than one wall sign per side on their buildings. Plaintiffs have three signs on the front wall of their building and one sign painted on the wall of the back of their building.

34. The sign ordinance provides exceptions to this limitation, none of which apply to Plaintiffs' signs. For one, the sign ordinance allows buildings of four stories or more one wall sign on up to three sides of the building, with a maximum area of 100 square feet per sign. Such signs are not counted in calculated maximum allowable sign area. Sec. 9.050(C)(4).

35. The sign ordinance allows signs affixed to windows on a building without a limit on the number. Sec. 9.050(H).

36. In addition to one wall sign, the sign ordinance allows a property owner to have multiple window signs, Sec. 9.050(H); a shingle sign or a monument sign, Sec. 9.050(B); a menu board, Sec. 9.050(D); a projecting sign, Sec. 9.050(E); an awning sign, Sec. 9.050(F); and an under-canopy sign, Sec. 9.050(G).

37. Thus, Plaintiffs could display multiple windows signs, a shingle sign, a monument sign, a menu board, a projecting sign, an awning sign, and an under-canopy sign on their property, but they cannot display more than one wall sign.

38. Plaintiffs do not wish to display window signs, a shingle sign, a monument signs, a menu board, projecting signs, awning signs, or under-canopy signs on their

property because those signs are not as effective in communicating Plaintiffs' message as their four wall signs currently on the building.

Signs Are Limited to a Maximum Total Area

39. The ordinance also limits the "maximum total sign area" to 1.5 square feet per linear foot of tenant frontage, except for buildings set back more than 300 feet from the abutting street right-of-way, which may have a total sign of up to two square feet per linear foot of tenant frontage. However, in no case may a single tenant exceed 300 square feet in total sign surface area. Sec. 9.050(A).

40. Leibundguth's building is set back less than 300 feet from the abutting street right-of-way.

41. According to the Village's calculation, Plaintiffs are permitted only 159 square feet for all of their signs. **Ex. B.**

42. Plaintiffs' sign on the back of their building facing the Metra is approximately 400 square feet, while the signs on the front of the building total approximately 146 square feet.

Exceptions to the Maximum Total Sign Area

43. Upon information and belief, the Village has allowed some businesses in Downers Grove to have signs totaling more than 300 square feet.

44. In addition, the sign ordinance provides several exceptions to the maximum allowable sign area. First, Properties abutting I-88 or I-355 are allowed a second monument sign to reach drivers on those highways that does not count in calculating the lot's total sign area. Sec. 9.050(B)(3).

45. Buildings of four stories or more are allowed one wall sign of 100 square feet or less on no more than three sides of the building, which are not counted against the maximum allowable sign area. Sec. 9.050(C)(4).

46. Further, for multi-tenant shopping centers, a tenant's panel sign is not counted toward the allowable sign surface area. Sec. 9.050(B)(2).

47. Finally, window signs, Sec. 9.050(H), and menu boards, Sec. 9.050(D), also are not counted in calculating the maximum allowable sign area.

Content-Based Exceptions to the Sign Ordinance

48. The sign ordinance exempts 15 types of signs from its provisions based on the content of those signs.

49. These content-based exemptions include:

- Governmental signs, public signs and other signs incidental to those signs for identification, information or directional purposes;
- "No trespassing" or similar signs regulating the use of property;
- Noncommercial flags of any country, state, or unit of local government;
- Real estate signs;
- Political signs and other noncommercial signs;
- "Memorial signs and tablets, names of buildings and date of erection when cut into masonry surface or inlaid so as to be part of the building or when constructed of bronze or other noncombustible material."

Sec. 9.030.

50. These signs are exempt from the permit requirement.

51. These signs are not subject to the requirement that a sign be “along a public roadway or drivable right-of-way,” which would prohibit them from facing the Metra.

52. Accordingly, Plaintiffs could display a sign facing the Metra if the content of their sign was political or noncommercial, advertised the sale or lease of the property, stated “no trespassing,” or was a memorial sign or tablet cut into masonry surface or inlaid so as to be part of the building. And if Plaintiffs were a governmental entity, their identification signs would be permitted to face the Metra.

53. The sign ordinance does not limit the number of these exempt signs that a property owner may erect.

54. Accordingly, Plaintiffs could display more than one wall sign if the content of their signs were political or noncommercial, advertised the sale or lease of the property, stated “no trespassing,” or were memorial signs or tablets cut into masonry surface or inlaid so as to be part of the building. And if Plaintiffs were a governmental entity, they would not be limited to one wall sign.

55. Because Plaintiffs’ signs advertise a commercial business, however, they are limited to one wall sign, which is limited in size and is prohibited from facing the Metra.

Effect of the Sign Ordinance and Exemptions for Some Signs

56. The amendment to the sign ordinance established an amortization period requiring all signs to comply with the sign ordinance by May 4, 2012, which was

later extended to May 5, 2014. The amortization period is non-compensated. Sec. 9.090(G). Any sign previously granted a variance could continue to be nonconforming until discontinued, abandoned, altered, moved or sold. Sec. 9.090(H).

57. The only exception to the requirement of full compliance is that signs in place in the DB or DT zoning districts or Fairview concentrated business district before January 1, 1965 are deemed “heritage signs” and are allowed to remain in place and be maintained in any manner to allow for continued use. Sec. 9.060(K).

58. Both of Plaintiffs’ hand-painted wall signs were in place before January 1, 1965, but Plaintiffs’ property is not located in the Downtown Business, Downtown Transitional, or Fairview concentrated business districts.

59. At Village Council meetings on September 2, September 9, and October 7, 2014, Mr. Peterson asked the Village Council to amend the sign ordinance to allow signs to face the Metra. Resolutions introduced at Village Council meetings on September 2 and October 7, which would have allowed signs to face the Metra, failed. **Ex. C.**

60. Mr. Peterson also applied for a variance with the Downers Grove Zoning Board of Appeals that would have allowed him to have a sign facing the Metra, have a sign directly painted on the wall of the building, and exceed the maximum aggregate sign area. On November 19, 2014, the Zoning Board of Appeals denied Mr. Peterson’s variance request. The Board’s letter denying the variance is attached as **Exhibit D.**

The Village's Sign Ordinance and Enforcement Have Injured Plaintiffs

61. Leibundguth seeks to continue to use its unique, historic, hand-painted wall sign facing the Metra, which is an important and effective method of reaching members of the public, as it has done for the past 70-plus years.

62. Plaintiffs' sign facing the Metra rail is a significant source of Leibundguth's revenues, which Mr. Peterson estimates could drop by approximately \$40,000 to \$60,000 if Plaintiffs were forced to remove the sign.

63. If Plaintiffs do not remove their wall signs, they could be subject to fines of \$50 to \$750 per violation per day. Village of Downers Grove, Municipal Code, Chapter 1, Section 1.15, attached as **Exhibit E**.

64. The Village, through its sign ordinance, is forcing Plaintiffs to decide between paying steep daily fines to keep their historic 70-year-old painted wall sign, which serves as one of their best sources of revenue, and painting over the historic sign, losing their best source of revenue, in order to comply with the sign ordinance and avoid such fines.

COUNT I

The sign ordinance's content-based restrictions violate the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution.

65. The allegations contained in all preceding paragraphs are incorporated herein by reference.

66. The sign ordinance places greater restrictions on some signs than others based on the sign's content and therefore violates the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution.

67. Section 9.030 of the Village sign ordinance exempts certain signs from its requirements, so that the owners of those signs do not require a sign permit and the signs are not subject to the same regulations as other signs, including the prohibition on signs facing the Metra rail tracks (but not a roadway) and the limits on the number of wall signs.

68. Plaintiffs could display a sign facing the Metra if the content of their sign was political or noncommercial, advertised the sale or lease of the property, or stated “no trespassing,” or if it were a memorial sign or tablet cut into masonry surface or inlaid so as to be part of the building. If Plaintiffs were a governmental entity, its signs identifying itself would be permitted to face the Metra.

69. Plaintiffs could display more than one wall sign if the content of the signs were political or noncommercial, advertised the sale or lease of the property, or stated “no trespassing,” or if they were memorial signs or tablets cut into masonry surface or inlaid so as to be part of the building. If Plaintiffs were a governmental entity, they would not be limited to one wall sign.

70. Because Plaintiffs’ signs advertise their business, they are limited to one wall sign, are limited in size, and may not have a sign facing the Metra.

71. Defendant has no compelling governmental interest in public health or safety for discriminating against signs based on their content.

72. The sign ordinance’s discrimination against signs based on their content is not narrowly tailored to serve any health or safety interest.

73. The sign ordinance's discrimination against signs based on their content is not the least restrictive means of serving any health or safety interest.

74. This violation of Plaintiffs' rights under the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution causes Plaintiffs irreparable harm for which they have no adequate remedy at law.

COUNT II

The sign ordinance's ban on painted wall signs violates the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution on its face and as applied to Plaintiffs.

75. The allegations contained in all preceding paragraphs are incorporated herein by reference.

76. Section 9.020(P)'s ban on any sign painted directly on a wall except in the Downtown Business, Downtown Transitional or Fairview concentrated business districts violates the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution on its face and as applied to Plaintiffs' hand-painted signs on the front and back walls of their building.

77. The Village does not possess a compelling, important, or even rational justification for Section 9.020(P)'s prohibition of any sign painted directly on a wall, including Plaintiffs' hand-painted signs, outside of the Downtown Business, Downtown Transitional or Fairview concentrated business districts.

78. Upon information and belief, the Village possesses no evidence that Section 9.020(P)'s ban on any sign painted directly on a wall, including the ban of Plaintiffs' signs, outside the Downtown Business, Downtown Transitional or

Fairview concentrated business districts advances public health and safety or enhances the Village's appearance.

79. The restriction on any sign painted directly on a wall of a building, including Plaintiffs' hand-painted signs, is not narrowly tailored to serve any governmental interests in public health and safety or enhancing the Village's appearance.

80. Upon information and belief, the Village possesses no evidence that prohibiting Plaintiffs' signs hand-painted directly on the wall of their building is no more extensive than necessary to advance its interests in public health and safety or enhancing the Village's appearance.

81. This violation of Plaintiffs' rights under the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution causes Plaintiffs irreparable harm for which they have no adequate remedy at law.

COUNT III

The sign ordinance's ban on signs facing the Metra violates the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution on its face and as applied to Plaintiffs.

82. The allegations contained in all preceding paragraphs are incorporated herein by reference.

83. Section 9.050(C)'s ban on any sign facing the Metra that does not also face a right-of-way violates the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution on its face and as applied to Plaintiffs' sign on the back of their building facing the Metra.

84. The Village does not possess a compelling, important or even rational justification for Section 9.050(C)'s prohibition on signs facing only the Metra, including Plaintiffs' sign on the back of their building.

85. Upon information and belief, the Village possesses no evidence that Section 9.050(C)'s ban on a sign facing only the Metra, including Plaintiffs' sign, advances public health and safety or enhances the Village's appearance.

86. The restriction on any sign facing only the Metra is not narrowly tailored to serve any governmental interests in public health and safety or enhancing the Village's appearance.

87. Upon information and belief, the Village possesses no evidence that prohibiting Plaintiffs' sign facing the Metra is no more extensive than necessary to advance its interests in public health and safety or enhancing the Village's appearance.

88. This violation of Plaintiffs' rights under the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution causes Plaintiffs irreparable harm for which they have no adequate remedy at law.

COUNT IV

The sign ordinance's limits on total sign area and the number of wall signs violate the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution on its face and as applied to Plaintiffs.

89. The allegations contained in all preceding paragraphs are incorporated herein by reference.

90. Section 9.050(A)'s limit on the maximum total sign size and Section 9.050(C)'s limit on the number of wall signs violate the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution on its face and as applied to Plaintiffs' signs.

91. The Village does not possess a compelling, important, or even rational justification for Section 9.050(C)'s restriction on the number of wall signs and Section 9.050(A)'s restriction on the size of all signs, including Plaintiffs' signs, while exempting other signs from the number and size restrictions.

92. Upon information and belief, the Village possesses no evidence that Section 9.050(C)'s limitation of only one wall sign and Section 9.050(A)'s limitation on total sign area, including such limitations on Plaintiffs' signs, advance public health and safety or enhance the Village's appearance.

93. The ordinance's restrictions on the number of signs on the wall of a property and the size of all signs, including Plaintiffs' signs, are not narrowly tailored to serve any governmental interests in public health and safety or enhancing the Village's appearance.

94. Upon information and belief, the Village possesses no evidence that its limitation of the total area and number of Plaintiffs' signs is no more extensive than necessary to advance its interests in public health and safety or enhancing the Village's appearance.

95. This violation of Plaintiffs' rights under the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution causes Plaintiffs irreparable harm for which they have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court enter judgment against Defendant and provide Plaintiffs the following relief:

A. A declaratory judgment stating that Section 9.020(P) of the Village of Downers Grove sign ordinance prohibiting a sign painted directly on a wall violates the First and Fourteenth Amendments to the United States Constitution and Article I, Section 4 of the Illinois Constitution, both on its face and as applied to Plaintiffs;

B. A declaratory judgment stating that Section 9.050(C) of the Village of Downers Grove sign ordinance prohibiting a sign that does not face a roadway or drivable right-of-way from facing the Metra rail violates the First and Fourteenth Amendments to the United States Constitution and Article I, Section 4 of the Illinois Constitution, both on its face and as applied to Plaintiffs;

C. A declaratory judgment stating that the limits on the maximum allowable sign area on a property and the number of wall signs on a property contained in Sections 9.050(A) and 9.050(C)(1) of the Village of Downers Grove sign ordinance, respectively, violate the First and Fourteenth Amendments to the United States Constitution and Article I, Section 4 of the Illinois Constitution, on

their face, as applied to the signs on the front of Plaintiffs' building, and as applied to Plaintiffs' sign on the back of their building facing the Metra;

D. A preliminary and permanent injunction restraining enforcement of Defendant's sign ordinance sections 9.020(P), 9.050(C) and 9.050(A) against Plaintiffs;

E. An award of nominal damages in the amount of \$1.00 for the violation of Plaintiffs' constitutional rights;

F. Plaintiffs' reasonable costs and expenses of this action, including attorney fees, pursuant to 42 U.S.C. § 1988(b), 740 ILCS 23/5(c), or any other applicable law;

G. All other further relief to which Plaintiffs may be entitled.

DATED: JANUARY 30, 2015

Respectfully submitted,

**ROBERT PETERSON and LEIBUNDGUTH
STORAGE & VAN SERVICE, INC.**

By: /s/ Jeffrey M. Schwab

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VERIFICATION

I, Robert Peterson, declare under penalty of perjury that the allegations in this Complaint are true and correct to the best of my knowledge, except as to matters stated to be on information and belief, and as to such matters I certify that I verily believe the same to be true.

A handwritten signature in cursive script, appearing to read "Robert Peterson", is written over a horizontal line.

Robert Peterson

Dated: January 30, 2015