



Realtor, Rhinebeck feud over TV as sign in store window

John Davis • Poughkeepsie Journal • February 14, 2011

RHINEBECK — It's a TV. No, it's an illuminated sign.

When is a TV a sign? That's a question being fought over by a Village of Rhinebeck business owner and the village zoning enforcement officer.

Realtor Chuck Ferri says village Zoning Enforcement Officer Robert Fennell is unfairly targeting his realty office for using a television monitor to advertise in the window of his office.

Fennell denies he's targeting the business and says he's only upholding the law.

Fennell and Ferri, co-owner of Century 21 Anita Ferri Realty, disagree about whether the monitor, which advertises homes and properties for sale, is an "internally illuminated sign," which is illegal in the village.

The monitor meets the definition of an illegal sign, Fennell said.

"What else could it be?" Fennell said. "It's not illuminated from the outside."

Ferri disagrees, saying the video screen is a "display," not a sign.

The debate raises questions about the evolving nature of technology clashing with community standards and regulations. Rhinebeck is not alone among local villages in prohibiting neon and other internally illuminated signs. The villages of Tivoli and Millbrook ban them, as does the rural Town of Clinton.

Fennell issued an order to remove the monitor on Jan. 13 and Ferri had 60 days to appeal.

After the 60 days expire, the village Board of Trustees has two options: It can require Ferri to appear in Village Court — where a justice can levy a fine and/or impose a jail sentence. Or it can seek an injunction in state Supreme Court ordering Ferri to remove the TV.

A village justice can levy an initial fine for up to

\$350 or six months in jail or both; up to \$700 and/or six months in jail for a second violation and up to \$1,000 and/or six months in jail for a third violation.

"(Village) Court can only levy fines," Fennell said. "They could not order him to remove the sign."

Ferri said he is ready to fight the village, whichever legal route it takes. He said he would appeal any fines levied by the village and welcome the opportunity to make his case in a state courtroom.

"We'll take it to the highest court," Ferri said.

Defining a sign

The monitor is 40 inches across, but the size of the screen is not an issue, Fennell said.

The language of the village code does not specifically mention televisions being prohibited in store windows. The code does state, "Internally illuminated signage shall be prohibited."

Current Rhinebeck sign regulations were adopted in June 2001. Fennell said he knows that internally illuminated signs were prohibited as far back as 1985.

Ferri said that based on the village zoning code, his monitor does not meet the definition of a sign. The code's definition of signs that are not outside a building is "inside the building within two feet of the window or in a manner to be viewed primarily by

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passersby."

Because the monitor is 30 inches from the window, Ferri said it cannot be considered a sign; it is a window display.

But Fennell said the monitor still meets the criteria for the definition.

"It may be 2 feet or it may be 3 feet but it's intended to be viewed by passers-by," he said.

Based on that logic, any object in a storefront in Rhinebeck — whether a mannequin or menu — can be considered a sign and subject to regulation by the village, said Peter Klose, Ferri's attorney.

Fennell said the sign violates another section of the village zoning code, which prohibits "off premise signs," which are signs advertising products, services or entertainment not sold at the lot where the sign is located.

"It's a double whammy," Fennell said.

Tough economy

Gary Magley, the owner of Hudson Valley Footwear on East Market Street in the Village of Rhinebeck, does not object to the television monitor in Ferri's office window.

"I think it looks good," he said. "He's just trying to generate business."

Magley said more than six years ago, he was required to remove a neon sign he had in his shoe store window for years. He said he does not see a need for Ferri to remove his monitor.

"It's hard enough to do business as it is," he said.

What Ferri provides on his monitor is a digital display of real estate listings and advertisements for local businesses provided by Realty Vision, a Montclair, N.J.-based company. The company provides the service to nearly 40 clients in New York, Connecticut, New Jersey and Washington, D. C., said Stephanie Patsiner, Realty Vision account executive.

Ferri also has had a monitor in his real estate office in the Chestnut Plaza on Route 9 in the Town of Poughkeepsie since April.

Patsiner said the problem Ferri is having with the monitor in Rhinebeck is the only one any Realty Vision client is having, although a couple of clients had to apply for sign permits to display them in their windows.

"I don't believe we've ever had an issue in any other town," she said.

The use of state-of-the-art technology in marketing is not something that usually creates problems with authorities, according to a marketing consultant in the Town of Beekman. Ed Lieberthal, president of Fanfare Corp., said he would be inclined to allow Ferri to continue using his television monitor to advertise real estate listings.

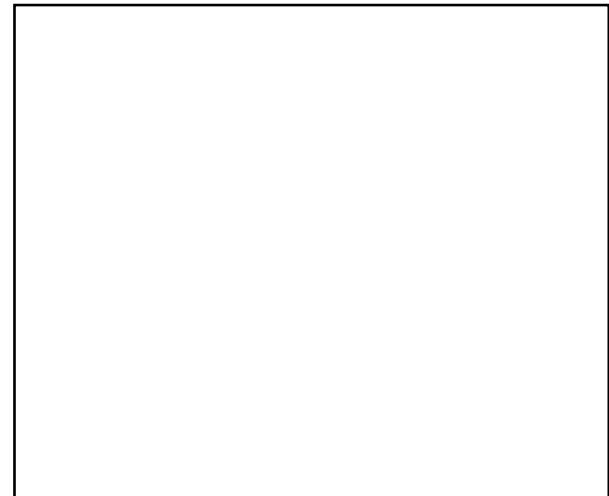
"In these times when doing business is so difficult — in my memory it's the most difficult I've ever seen — I would opt to give a nod to the small-business owner to use any means to market, especially one that offers information that people want to have," he said.

Evolving technology

Bob Ritter, owner and president of First Direct, a Hopewell Junction-based marketing firm, said the debate over the use of the monitor shows how the medium in which images of the real estate listings are presented becomes part of the message.

"I am reminded of Marshall McLuhan, who said, 'The medium is the message,'" he said, referring to the educator and author on communication who became a figure of media discourse in the 1960s and '70s.

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The use of new technology does present other issues in marketing, Ritter said. This includes using the Internet and e-mail as well as new regulations in telemarketing.

"Electronic media is creating problems about privacy," he said. "Today, you call somebody on a do-not-call list and you can be subject to a \$10,000 fine."

Ferri says Fennell seems to be selectively enforcing the zoning law because two other real estate businesses in the village have paper real estate listings flush against the inside of their storefront windows that cover more than the 30 percent of the window pane permitted by the village law.

Fennell, though, said he considers those real estate listings as "merchandise" rather than signs, and nowhere near as "egregious" as a monitor.

"We have made an effort to eliminate the really egregious signs — the internally illuminated signs and A-frames on the sidewalks," he said.

Klose said, "The point here is when the zoning enforcement officer becomes the arbiter of what goes in your window then the law becomes too broad."

Fennell said Ferri has until nearly the middle of March to appeal his order to remove the monitor.

"If you have any problem with the zoning enforcement officer, you go to the village Zoning Board of Appeals and ask for an interpretation," Fennell said.

Ferri said Friday he and his attorney were still discussing whether to appear before the zoning board. He questions whether doing so would be in his interest.

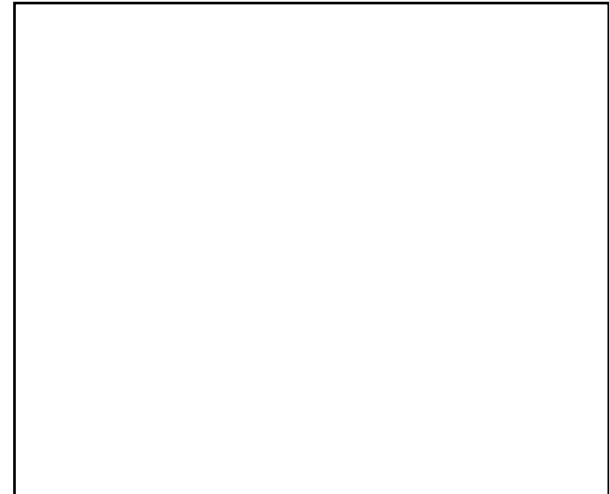
"I don't think I'll get an impartial hearing because somebody in the village doesn't want that TV in the window," Ferri said.

Reach John Davis at jpdavis@poughkeepsiejournal.com or 845-437-4807.



A monitor advertises real estate listings in the storefront window of Century 21 Anita Ferri Realty in Rhinebeck. The Village of Rhinebeck has ordered the owner to remove a monitor from this storefront window. It advertises real estate listings and local businesses. (Karl Rabe/Poughkeepsie Journal)

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