

Selecting an Attorney for your Zoning Case

Many USSC Members help their Sign Customers with local Zoning Appeals and Variances. In some situations, a relaxed and informal approach is best for the Board that will hear the case, including showing up in your work boots and jeans. In others, a more structured and comprehensive presentation is needed. When it comes time to hire an Attorney for a Sign Appeal, how do you make your selection?

I can say, from personal experience, that finding the right attorney for a Sign Appeal can be a mystical and sometimes frustrating experience. We are often asked at the USSC Office for advice on how to obtain a local attorney, or for a referral. Being headquartered in Pennsylvania, giving advice or specific referrals for attorneys across the United States can be challenging, though we do our very best to assist Members in evaluating lawyers and Zoning Appeals.

Open up any local Yellow Page Directory and you will find a whole list of attorneys; call your State or County Bar Association and you may obtain a referral to a lawyer that you have never met. You can generally assume, of course, that you need an attorney licensed to practice in the State where your Case will be heard. You can also generally assume that attorneys will have certain minimum qualifications: they have graduated from a Law School with a Juris Doctor degree; they have passed the State Bar Exam in the state(s) where they practice; they maintain an annual License to practice Law (which can be revoked by the State for cause); they often will be required to attend Continuing Legal Education (CLE) courses annually by the State Licensing authority.

Sign Appeals are indeed unique and more difficult to handle than your garden-variety Zoning request. Sign Appeals are unique and difficult because they often combine different areas of the law, if you are presenting a thorough case. There is always a component of local and state law in a Zoning Appeal, either related to local Building Code or Zoning Code (how big the sign can be, location of the sign, height of signs, etc.). In the background of almost every Sign Appeal there lurk serious questions of Federal constitutional law, most often related to the First Amendment. An attorney well-versed in both areas of the law may be hard to find, but will give your Appeal its greatest chance of success.

How to locate an attorney

1. Lawyer Referral services are often available through your State Bar Association - this will be a general referral for an attorney who is licensed, in good standing, and may have certain expertise or specialties. This referral never addresses the competence or track record of the attorney. Referrals are often given on a rotating basis (you get a referral to whoever is next on the list).
2. Lawyer Referral services are often available through the Bar Association in your County - again, this will be a general referral for an attorney who is licensed, in good standing, and may have certain expertise or specialties.
3. There are some Lawyer Referral services available on the Internet. The pool of attorneys may be more limited here, as the pool may be limited to those who have registered with a particular website or service, and or paid a fee or paid to advertise their qualifications. "All" qualified attorneys will not be listed, typically.
4. Better referrals may be obtained closer to home: who is successful in your community; who have you seen at Zoning Boards representing other Clients in unrelated matters; can you obtain a name by way of personal recommendation (someone who used the attorney and was satisfied); do you know an attorney through an unrelated local organization (fraternal organization, Lions Club, Athletic Club, etc.)?
5. In some cases, the Client will want to use his or her attorney. In this case, your job is done (excepting now you have to educate the Client's attorney on how to handle a sign appeal).

Do I need a lawyer for a Sign Appeal?

The answer to this question will depend on several factors:

- a. Some States require Zoning Board Applicants to use an Attorney; if you are in this type of State, the answer is "Yes."
- b. Some local Municipalities encourage and/or require that Applicants bring an attorney. This situation may or may not be legal or proper, particularly if the State does not require it, but you should make yourself aware of any local rules or customs before proceeding.
- c. If your Zoning Appeal is complicated, you should recommend to your Client that an Attorney is required. Your job, as the Sign Company, is to be a "sign expert", not a legal expert.
- d. If your case will have local opposition, either from local residents or the town itself, an Attorney is absolutely recommended (they can help diffuse a situation, and if you are getting yelled at, at least you have company).

What Specialties to look for

An attorney who has a practice that includes Land Use and Development law, Real Estate law, Zoning representations and applications, Trial law, Municipal Planning law, and other related specialties will be better equipped to handle an Sign Zoning Appeal. An attorney who specializes in Family law, Estates and Trusts, Corporate law, Personal Injury law, and so forth will be less qualified to handle a local Zoning Appeal.

What traits to look for

The ideal attorney to handle a local Zoning Appeal would be an attorney who is respected in the local community and by fellow attorneys, has some experience before Zoning Boards, has experience before your specific Zoning Board, and is open to using your ideas and recommendations on how to present an effective case for the Sign Approval. Some attorneys will resist suggestions and new ideas. Some are not even aware that there is a complete body of research available related to On Premise Signs, or that the United States Sign Council has funded this research, or that the USSC even exists. If you can educate your attorney, your chances for success are greatly increased.

The delicate balance

The Sign Company and the Client both want an attorney who will zealously fight for their Sign Appeal. They see advantages if an attorney is "known" locally or who is "connected" in some way. This ensures that the attorney will be respected by the Board and the town, and that the attorney may know Board Members or town officials personally, and that the attorney is familiar with all the local nuances, rules, and practices.

The downside of employing this attorney is that, sometimes, the attorney may hold back, even if it's subconsciously. They may not want to "go to the mat" for your Appeal because they appear before the Zoning Board frequently. As one attorney put it, in more colorful language, "you don't ***where you eat", or one does not pollute where one resides. If an attorney is so tied-in locally that they are concerned about their image and reputation, you may not get zealous advocacy, though you will get extremely competent advocacy.

The flip side of this issue is that sometimes a local attorney can "broker" or negotiate a result. The Client gets something (half a loaf) and the town gets something (does not grant the complete request). Everyone is happy, by avoiding the potential of losing completely. This is a great situation if the Negotiated settlement is the only possible recourse. But, if it is the path of least resistance for the attorney, and is motivated by preserving the attorney's image as "power broker", then a question is raised if this is in reality the best result.

And for some Clients, the "compromise" agreement saves some cost and time, making it seem advantageous. However, for Sign Companies, the compromise settlement works against their long term interests. For instance, if a larger sign is dictated by Research, why not pursue this point vigorously in the name of safety and science? A Compromise result often means less sign, less sign work, less revenue, and a precedent set for years to come in the town.

Sample questions to ask

#1 Has the attorney handled Sign Applications before?

#2 Does the attorney specialize in appropriate areas of law: Zoning law, Land Use and Development law, Real Estate Law, Zoning Board presentations, Trial Law, Municipal Law?

#3 How much does the attorney charge per hour and what does the Attorney project that a typical Zoning Appeal will cost? You should communicate this information to the Client and get his or her approval. Never give a Client a fixed cost or fixed estimate for any legal work. You should also make clear who is responsible for paying for legal fees, generally the Client. If the Sign Company pays the Attorney directly, and later bills the Client by agreement, the Sign Company has more leverage and control over the attorney, as the Sign Company sits as the "client." If the Customer is paying directly, attorneys can then justify a tactic or approach (that the sign company does not prefer) by saying that the approach will yield a result that's "in the best interest of the Client", and that phrase can cover a whole range of decisions. In this situation, the Sign Company has no leverage.

#4 Has the attorney ever been admonished or cited by an ethics committee? Has the attorney ever had any complaints filed against him or her?

The Final Issue: Compensation

- A. Never include outside Attorneys fees in your quotation: not in your sign quotation, and not in any estimate on the cost to handle a Zoning Board Appeal. You have no idea exactly what your case will cost, and you should not place yourself in the position of having to pay the fees out of your own pocket; in that case, you may wish that you had never taken the job.
- B. Attorneys quote their legal work on an hourly basis; you should do the same for your own work on any Zoning appeal. If you give your time and expertise away, you have just made thousands less on your sign job (unless, of course, you enjoy getting exercise).
- C. Always make the Zoning Appeal and Legal arrangements very clear with your Customer. Put them in writing; excessive and confusing Zoning regulations make even routine jobs uncertain; never promise anything in the realm of Zoning, and make it clear to the Customer that you cannot provide promises and assurances because of the Zoning Code and local government – not because of you the sign company – and if the customer has an issue with time delays and lack of predictability, complaints should be taken directly to the source – again the local government and drafters of the Code.

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