



## Findings of Fact

1.

Monumedia obtained a building permit to install three signs inside the Franco building which is located at 3075 Peachtree Road, at the intersection of Peachtree Road and East Paces Ferry Road, in Atlanta. (See Monumedia's Statement of Material Facts 3, 5, attached to its Motion for Summary Determination).

2.

The signs were installed behind glass window panes. The advertisements displayed on the signs are not visible inside the Franco building. Rather, the advertisements are exclusively visible to the public traveling outside of the building. The signs display off-premises advertisements which are in the specific interest of the traveling public. (Tr. 43, 58, 65-67, 78; Exs. 1A, 1B, 1C, 1D, 2A, 2D.)

3.

The Monumedia signs are LED signs which display different messages and which change the messages electronically. (Tr. 46, 48; Exs. 1A, 1B, 1C, 1D.)

4.

Peachtree Road, at the intersection of East Paces Ferry Road, is also known as State Route 9. It is a state-controlled route and part of the primary highway system. (Tr. 25, 29-30, 33, 35, 76-78; Ex. 7.)

5.

Two of Monumedia's signs are visible from Peachtree Road and are within 660 feet of the edge of the right of way. (Tr. 78; Exs. 1A, 1B.)

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stricken exhibits, nor GDOT's Proposed Findings of Fact and Conclusions of Law have been considered in rendering this decision.

6.

The Franco building is a two-story building located in an area that is zoned commercial. At the time Outdoor Advertising Manager Bethann Perkins visited the Franco building in August 2015, the building was vacant. No businesses were operated in the building. (Tr. 23, 60.)

7.

Monumedia has not applied for an outdoor advertising permit for its signs. (Tr. 21-22, 24.)

8.

There is a permitted static outdoor advertising sign located on top of the Franco building. (Tr. 22-23.) That sign was permitted in the 1970s and is within 100 feet of the Monumedia signs. (Tr. 23, 36-38; Ex. 11.)

9.

There is a permitted multiple message sign within 5000 feet of Monumedia's signs, on the same side of the road. (Tr. 23, 38-39; Exs. 3A, 3B, 7.)

10.

After receiving a complaint about Monumedia's signs and conducting its own investigation, GDOT determined that two of Monumedia's signs are unauthorized or illegal. On February 18, 2015, GDOT sent Monumedia notice of its determination and directed Monumedia to remove the off-premise messages or remove the signs within thirty days of receiving the notice. (Tr. 24; Ex. 15.) In response, Monumedia requested a hearing.

## Conclusions of Law

1.

Here GDOT asserts that Monumedia's signs are illegal signs. Thus, GDOT bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07(1). However, Monumedia bears the burden of proof as to any affirmative defenses. *See* Ga. Comp. R. & Regs. 616-1-2-.07(1)(a).

2.

This matter concerns two signs displaying advertisements to the travelling public along a primary highway system within the state. Monumedia argued that its signs are not regulated by the Georgia Outdoor Advertising Control Act ("Act").

3.

The Georgia General Assembly has declared it to be the policy of the state to regulate outdoor advertising in areas adjacent to the interstate and primary highway systems within the state. O.C.G.A. § 32-6-70. It has also authorized GDOT "to promulgate rules and regulations governing the issuance and revocation of permits for the erection and maintenance of outdoor advertising" authorized by Georgia Code sections 32-6-72 and 32-6-73. O.C.G.A. § 32-6-90. The rules and regulations are to be consistent with the safety and welfare of the traveling public and the purposes of the federal Highway Beautification Act. *Id.*

4.

Georgia Code section 32-6-72(4) authorizes outdoor advertising signs which provide information in the specific interest of the traveling public in areas that are zoned commercial or industrial. O.C.G.A. § 32-6-72(4). However, such signs are regulated by GDOT. Specifically, a permit is required for outdoor advertising signs located within 660 feet of the nearest edge of the

right of way of controlled routes, in an area zoned commercial or industrial, and which are visible from the main traveled way. Ga. Comp. R. & Regs. 672-6-.03(1)(a)(1)(ii).

5.

Further, outdoor advertising signs may not be located within 500 feet of another outdoor advertising sign on the same side of the road. O.C.G.A. § 32-6-75(a)(17). In addition to this general spacing requirement, multiple message signs may not be located within 5000 feet of another multiple message sign on the same side of the road. O.C.G.A. § 32-6-75(c)(1)(C); Ga. Comp. R. & Regs. 672-6-.06(2)(c)(1). Therefore, to be eligible for a permit, a proposed sign must meet, *inter alia*, zoning, location, and spacing requirements.

6.

Here the evidence established that Monumedia's signs are located within 660 feet of the nearest edge of the right of way of a controlled route in an area zoned commercial. Thus, it would appear that Monumedia's signs require a permit and must meet the spacing restrictions in order to obtain the permit.

7.

As noted above, Monumedia argued that its signs are not regulated by the Georgia Outdoor Advertising Control Act. In other words, Monumedia argued that its signs do not require permits. Specifically, Monumedia argued that the plain language of the relevant statutes shows that it does not apply to signs located inside buildings.<sup>2</sup> Both parties focused on the language of a provision in Georgia Code section 32-6-71, which states as follows:

(14) "Outdoor advertising" or "sign" means any outdoor sign, light, display, device, figure, painting, drawing, message, placard, poster, billboard, or other thing which is designed, intended, or used to advertise or inform, any part of the

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<sup>2</sup> Monumedia also raised constitutional challenges to the statute. This tribunal has no authority to resolve constitutional challenges to statutes. Ga. Comp. R. & Regs. 616-1-2-.22(3). Accordingly, those arguments have not been addressed.

advertising or information contents of which are visible from any place on the main traveled way of the interstate or primary highway systems.

O.C.G.A. § 32-6-71(14).

8.

Monumedia argued that the word “outdoor,” which appears before “sign,” modifies every word in the list. It is true that “the first adjective in a series of nouns or phrases modifies each noun or phrase in the following series unless another adjective appears.” *Lewis v. Jackson Energy Coop. Corp.*, 189 S.W.3d 87, 92 (Ky. 2005). However, here another adjective (i.e., the word “other”) appears before the word “thing.” See *Kelley v. Dahle*, No. 11-C-600, 2012 U.S. Dist. LEXIS 104111, at \*12-13 (E.D. Wis. July 26, 2012) (concluding that the first adjective (i.e., “legal”) did not modify the last word in the series (i.e., “expenditures”) because “expenditures” was preceded by another adjective (i.e., “other’’)). Thus, the statute could be construed to read “‘outdoor advertising’ or ‘sign’ means any outdoor sign, [outdoor] light, [outdoor] display, [outdoor] device, [outdoor] figure, [outdoor] painting, [outdoor] drawing, [outdoor] message, [outdoor] placard, [outdoor] poster, [outdoor] billboard, or *other thing*.” O.C.G.A. § 32-6-71(14) (emphasis added). If construed in that fashion, the portion of the statute which reads “other thing which is designed, intended, or used to advertise or inform, any part of the advertising or information contents of which are visible from any place on the main traveled way of the interstate or primary highway systems” could include a sign which is located inside of a building, but was designed or intended to display advertising outside of the building to those traveling on the primary highways of the state. Accordingly, under the plain language of the statute, Monumedia’s indoor signs can be considered “other thing[s]” designed or intended to display advertising to those traveling on the highway.

Similarly, the content advertised on Monumedia's signs can be considered an "[outdoor] message." One dictionary defines a "message" as follows:

- 1: a charge, service, or function of a messenger . . .
- 2: a written or oral communication or other *transmitted* information sent by messenger or by some other means (as by signals).

Webster's Third New International Dictionary 1418 (1986) (emphasis added). Another dictionary defines a "message" as follows:

- 1.a. A usu[ally] short communication transmitted by words, signals, or other means from one person, station, or group to another.
- b. The substance of such a communication; the point or points conveyed.
2. A statement made or read before a gathering.
3. A basic thesis or lesson; a moral.

American Heritage College Dictionary 855 (3d. ed. 1997). Yet another dictionary defines a message as "a communication containing some information, news, advice, request, or the like, sent by messenger, radio, telephone, or other means." Webster's Encyclopedic Unabridged Dictionary of the English Language 1206 (2001). In each instance a message is defined as a type of communication transmitted or conveyed to a person or persons. To fulfill the purpose of the message (i.e., communicate the information), it must be transmitted or sent to the recipient. Thus, an important aspect of a message is where or to whom it is communicated. For example, if an individual is seated inside of a building, speaking into a loudspeaker which transmits the message to speakers that only project the message to individuals outside of the building, then the message would not be considered an "indoor" message. Rather, it is an outdoor message, because it is being communicated to the outdoors. That is the same scenario presented here. The advertising content of the signs at issue is only visible to, and intended to be visible to, the traveling public outside of the Franco building. Therefore, the advertising content on

Monumedia's signs is considered an "[outdoor] message" and in turn "outdoor advertising." O.C.G.A. § 32-6-71(14).

10.

Alternatively, the statute could be considered ambiguous in that it is unclear whether the relevant statutes only regulate signs that are physically located outside or whether they regulate signs which display content that is visible from the outside.<sup>3</sup> The very provision at issue references the visibility of the advertising or information. *See* O.C.G.A. § 32-6-71(14) ("any part of the advertising or information contents of which are *visible* from any place on the main traveled way of the interstate or primary highway systems") (emphasis added). There are other references to visibility in the Act and the implementing regulations. *See, e.g.*, O.C.G.A. § 32-6-72 ("No outdoor advertising shall be erected or maintained within 660 feet of the nearest edge of the right of way and *visible* from the main traveled way of the interstate or primary highways in this state, except the following: . . .") (emphasis added); *see also* Ga. Comp. R. & Regs. 672-6-.03(1)(a)(1) ("The following are required to obtain a permit prior to the construction or erection of a sign[:] . . . Signs within 660 feet of the nearest edge of the right of way of all controlled routes and *visible* from the main traveled way which are . . .") (emphasis added).

11.

Faced with a similar issue, the New Jersey Supreme Court had to decide whether displays consisting of backlit transparencies placed behind a store's windows, and which were visible from outside the building, were regulated by a municipal sign ordinance. *New Jersey v. Schad*, 733 A.2d 1159 (N.J. 1999). In that case, the court focused on the intent of the signs and the fact that the signs were visible from the outside. *Id.* at 1166-67. Specifically, in interpreting the



qualifying word “outside,” the court noted that limiting the interpretation to mean only signs that are physically located outside would allow a proprietor to circumvent the intended effect of the ordinance by “placing an otherwise noncomplying sign behind a window inside of the premises.” *Id.* at 1167-68. Ultimately, the court concluded that “[a]n interpretation of the term ‘outside’ that focuses on the external visibility of the sign better harmonizes the language of the ordinance with the drafters’ intent.” *Id.* at 1168.

12.

The Georgia Supreme Court has provided the following guidelines for statutory interpretation:

In construing a statute, our goal is to determine its legislative purpose. In this regard, a court must first focus on the statute's text. In order to discern the meaning of the words of a statute, the reader must look at the context in which the statute was written, remembering at all times that “the meaning of a sentence may be more than that of the separate words, as a melody is more than the notes.” If the words of a statute, however, are plain and capable of having but one meaning, and do not produce any absurd, impractical, or contradictory results, then this Court is bound to follow the meaning of those words. If, on the other hand, the words of the statute are ambiguous, then this Court must construe the statute, keeping in mind the purpose of the statute and “the old law, the evil, and the remedy.” O.C.G.A. § 1-3-1(a).

*Busch v. State*, 271 Ga. 591, 592 (1999) (citations omitted).

13.

In a case concerning the Georgia Outdoor Advertising Control Act, the Georgia Court of Appeals determined that “[t]he intent of the General Assembly, when the entire Act is read together, is to protect the public traveling along the highway from distractions, from aesthetic desecration and from nuisances all associated with the proliferation of signs in a concentrated

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<sup>3</sup> If the statute is ambiguous, then it is necessary to ascertain the legislature’s intent. *Labovitz v. Hopkinson*, 271 Ga. 330, 336 (Ga. 1999) (“Faced with an ambiguous legislative enactment, it is the duty of the courts ‘to seek diligently to arrive at the legislative intent. . . .’” (quoting *Lamons v. Yarbrough*, 206 Ga. 50 hn.1 (1949))).

area along the highway.” *Turner Communications Corp. v. Georgia Dept. of Transp.*, 139 Ga. App. 436, 438 (1976).

14.

Monumedia does not dispute that the signs in the Franco building are intended to advertise to the public traveling along Peachtree Road. To interpret Georgia Code section 32-6-71(14) to exclude an LED sign that is displaying advertising to the traveling public simply because it is physically located behind a glass window would lead to an absurd result. It would allow a building’s proprietor to erect a sign behind a window inside of a building while still communicating advertisement to the traveling public. Such an interpretation would undermine the objectives of the Act to protect the traveling public from distractions, aesthetic desecration, and nuisances associated with the proliferation of signs along the highway. *See New Jersey*, 733 A.2d at 1167-68; *Turner Communications Corp.*, 139 Ga. App. at 438.

***GDOT Was Not Required to Prove that  
Petitioner Did Not Meet an Exception to the Permit Requirement***

15.

After GDOT presented its case-in-chief, Monumedia moved for involuntary dismissal of the case. Monumedia argued that GDOT failed to prove that the Monumedia signs were not advertising activities conducted within 100 feet of the signs. During the hearing, the undersigned deferred ruling on the motion. For the reasons that follow, Monumedia’s motion is denied.

16.

As noted above, GDOT is authorized to promulgate rules and regulations governing the issuance and revocation of outdoor advertising signs. O.C.G.A. § 32-6-90; *Walker v. Dept. of Transp.*, 279 Ga. App. 287, 291 (2006). GDOT Rule 672-6-.03(1) lists the types of signs that require a permit. Ga. Comp. R. & Regs. 672-6-.03(1). A separate subsection of that rule lists the

types of signs that do not require a permit. Ga. Comp. R. & Regs. 672-6-.03(2). In other words, Rule 672-6-.03(2) lists the exceptions to the permit requirement. Those exceptions include, *inter alia*, signs advertising activities conducted on the premises where the sign is located or within 100 feet of the sign. Ga. Comp. R. & Regs. 672-6-.03(2)(b).

17.

In general, the party seeking to change the state of affairs bears the burden of proof. *Schaffer v. Weast*, 546 U.S. 49, 56 (2005) (citing 2 J. Strong, McCormick on Evidence § 337, p. 412 (5<sup>th</sup> ed. 1999)). However, when a particular element is an exception to the prohibitions of a statute or can fairly be characterized as an affirmative defense, the party claiming its benefits bears the burden of proof. *Schaffer*, 546 U.S. at 57; *NLRB v. Ky. River Cmty. Care, Inc.*, 532 U.S. 706, 711 (2001); *Fed. Trade Comm. v. Morton Salt Co.*, 334 U.S. 37, 44-45 (1948); *Gentry v Harborage Cottages-Stuart, LLLP*, 654 F.3d 1247, 1258-59 (11<sup>th</sup> Cir. 2011); *see* Ga. Comp. R. & Regs. 616-1-2-.07(1)(a).

18.

Here GDOT asserted that Monumedia's signs were illegal signs because they are outdoor advertising signs located in an area zoned commercial and do not have permits. GDOT then presented a *prima facie* case establishing its assertions. Thereafter, it was incumbent on Monumedia to establish an exception to the permit requirement. Stated differently, the exceptions to the permit requirement are properly characterized as affirmative defenses. Thus, it was Monumedia's burden to prove any such affirmative defenses, and Monumedia did not do so.

*Monumedia's LED Signs Are Multiple Message Signs*

19.

As an alternative basis for its motion for involuntary dismissal, Monumedia argued that its signs are not multiple message signs. Specifically, Monumedia argued that its signs did not meet the definition of multiple message signs in Georgia Code section 32-6-71(11.1), which states as follows: “‘Multiple message sign’ means a sign, display, or device which changes the message or copy on the sign electronically by movement or rotation of panels or slats.” O.C.G.A. § 32-6-71(11.1). Monumedia emphasized the fact that its signs did not change their messages “by movement or rotation of panels or slats.” For the reasons that follow, Monumedia’s alternative basis for its motion is also without merit.

20.

First, even if the undersigned agreed with Monumedia’s argument, for the reasons stated above, Monumedia’s signs are outdoor advertising signs, and as such they may not be located within 500 feet of another outdoor advertising sign.<sup>4</sup> The permitted static signs on top of the Franco building are within 500 feet of Monumedia’s signs and therefore prevent Monumedia from obtaining a permit. O.C.G.A. § 32-6-75(a)(17).

21.

Second, in 2006, the legislature amended Georgia Code section 32-6-75 by adding a provision for non-mechanical LED multiple message signs. 2006 Ga. ALS 727; 2006 Ga. Act 727; 2005 Ga. HB 1097. In particular, the legislature added the following subsection:

(F) Nonmechanical electronic multiple message signs that are otherwise in compliance with this subsection and are illuminated entirely by the use of light

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<sup>4</sup> In other words, even if Monumedia’s signs were not considered “multiple message signs,” they would still be considered “outdoor advertising” signs. As such they would be required to meet the 500 feet spacing requirement. Because Monumedia cannot meet the 500 feet spacing requirement, it is not eligible for a permit.

emitting diodes, back lighting, or any other light source shall be permitted under the following circumstances: . . .

*Id.*; O.C.G.A. § 32-6-75(c)(1)(F).

22.

It is unfortunate that the legislature did not, at the same time, amend the definition of “multiple message sign” in section 32-6-71(11.1) to clearly account for this change. Nonetheless, the fact that the legislature added a provision specifically including LED signs within the section of 32-6-75 that regulates multiple message signs evidences a clear intent to regulate LED signs with changing messages as “multiple message signs.”

***Monumedia’s Signs Are Illegal Signs***

23.

Under the plain language of section 32-6-71(14), Monumedia’s signs are either “other thing[s] . . . designed, intended, or used to advertise” or the content on Monumedia’s signs is an “[outdoor] message.” Therefore, Monumedia’s signs meet the definition of “outdoor advertising.” Alternatively, section 32-6-71(14) must be interpreted to include Monumedia’s signs as “outdoor advertising” because to do otherwise would lead to an absurd result and would undermine the intent of the Act to protect the traveling public from distractions, aesthetic desecration, and nuisances.

24.

Monumedia’s outdoor advertising signs provide information in the specific interest of the traveling public, and are located within 660 feet of the nearest edge of the right of way of a controlled route in an area zoned commercial. Therefore, Monumedia’s signs require permits. Ga. Comp. R. & Regs. 672-6-.03(1)(a)(1)(ii).

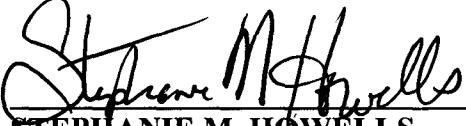
25.

Monumedia does not have permits for its signs and failed to establish an exception to the permit requirement. Accordingly Monumedia's signs are illegal. O.C.G.A. § 32-6-71(6)(A).

**DECISION**

For the foregoing reasons, GDOT's determination that Monumedia's signs are illegal is **AFFIRMED.**

**SO ORDERED** this 12<sup>th</sup> day of November, 2015.

  
**STEPHANIE M. HOWELLS**  
**Administrative Law Judge**

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

MONUMEDIA II, LLC,	:	
Petitioner,	:	
	:	
v.	:	Docket No.: OSAH-DOT-OA-1502559-60-Howells
	:	
DEPARTMENT OF TRANSPORTATION,	:	
Respondent.	:	

**NOTICE OF INITIAL DECISION**

This is the Initial Decision of the Administrative Law Judge (Judge) in the case. This decision is reviewable by the Referring Agency. If a party disagrees with this decision, the party may file a motion for reconsideration, a motion for rehearing, or a motion to vacate or modify a default order with the OSAH Judge. A party may also seek agency review of this decision.

**FILING A MOTION WITH THE JUDGE AT OSAH**

The Motion must be filed in writing within ten (10) days of the entry, i.e., the issuance date, of this decision. **The filing of such motion may or may not toll the time for filing an application for agency review.** See O. C.G.A. §§ 50-13-19 and 50-13-20.1. Motions must include the case docket number, be served simultaneously upon all parties of record, either by personal delivery or first class mail, with proper postage affixed, and be filed with the OSAH clerk at:

Clerk  
Office of State Administrative Hearings  
Attn.: Kevin Westray, [kwestray@osah.ga.gov](mailto:kwestray@osah.ga.gov)  
225 Peachtree Street, NE, South Tower, Suite 400  
Atlanta, Georgia 30303-1534

**APPLICATION FOR AGENCY REVIEW**

An application for Agency Review must be filed within thirty (30) days after service of this Initial Decision. O.C.G.A. §§ 50-13-17 and 50-13-41. A copy of the application for agency review must be simultaneously served upon all parties of record and filed with the OSAH clerk. The application for Agency Review should be filed with:

Commissioner  
Georgia Department of Transportation  
No. 2 Capitol Square  
Atlanta, Georgia 30334

This Initial Decision will become the Final Decision of the agency if neither party makes a timely application for agency review. O.C.G.A. §§ 50-13-17 and 50-13-41. In certain cases, an Initial Decision may become Final and therefore not subject to review either by agency provision or the provisions of O.C.G.A. § 50-13-17(c). When a decision becomes Final, an application for judicial review must be filed within thirty (30) days in the Superior Court of Fulton County or the county of residence of the appealing party. If the appealing party is a corporation, the action may be brought in the Superior Court of Fulton County or the superior court of the county where the party maintains its principal place of doing business in this state. O.C.G. A. § 50-13-19(b).