

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

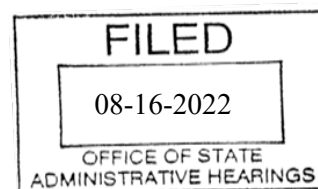
**FMG VALDOSTA, LLC,
Petitioner,**

v.

**GEORGIA DEPARTMENT OF
TRANSPORTATION,
Respondent.**

**Docket No.: 2221041
2221041-OSAH-DOT-OA-92-Barnes**

Agency Reference No.: 2221041



INITIAL DECISION

I. Introduction

This dispute involves the application of FMG Valdosta, LLC (“FMG”) for a multiple message supplement. The hearing was conducted on June 6, 2022, before the undersigned administrative law judge. Petitioner was represented by G. Franklin Lemond, Jr., Esq. Respondent, Georgia Department of Transportation (“GDOT” or “the Department”), was represented by Pearson Cunningham, Esq. and Denise Weiner, Esq. The record was held open to allow the parties to make post-hearing submissions. For the reasons stated below, the decision of the Department to deny the multiple message supplement is REVERSED.

II. Findings of Fact

1. FMG has owned and operated a back-to-back outdoor advertising sign in Lee County, Georgia on State Route 520 since 1998. This existing sign bears Permit No. C0585. *See* Testimony of Bart Holt; Petitioner’s Exhibit 1.

2. The existing sign sits on the south side of State Route 520. *See* Testimony of Bart Holt; Petitioner’s Exhibit 2.

3. In neighboring Dougherty County, FMG owns and operates another outdoor

advertising sign located on State Route 136301. *See* Testimony of Bart Holt; Petitioner’s Exhibit 3.

4. The Dougherty County sign, which has existed since 2017, bears Permit No. D4397 and is permitted as an electronic multiple message sign. *See* Testimony of Bart Holt; Petitioner’s Exhibit 3.

5. D4397 sits on the west side of State Route 136301 and is oriented toward and intended to be read by traffic traveling along State Route 136301. *See* Testimony of Bart Holt; Petitioner’s Exhibit 4.

6. On November 8, 2021, FMG applied to the Department for a multiple message supplement to be located at C0585 (Application No. 1001417) (the “Multiple Message Sign Application”). *See* Petitioner’s Exhibit 5.

7. FMG applied to convert this existing sign from a static outdoor advertising sign to an electronic outdoor advertising sign pursuant to an agreement with Lee County, whereby the County would allow FMG to convert C0585 to an electronic sign in exchange for the removal of two signs elsewhere in Lee County. *See* Testimony of Bart Holt.

8. FMG agreed to take down the signs bearing GDOT permit number C0423 and B0409. *Id.*

9. On December 22, 2021, GDOT denied FMG’s Multiple Message Sign Application. *See* Petitioner’s Exhibit 6, p. 2.

10. The basis for the Department’s denial was that the proposed multiple message sign would be “located within 5,000 feet of another permitted multiple message sign on the same side of the highway.” *Id.*

11. The Department stated that the application had been denied because C0585 is

located within 5,000 feet of another permitted multiple message sign on the same side of State Route 520. *See* Testimony of Bart Holt.

12. Upon further investigation, FMG learned that GDOT was relying on the multiple message sign located on State Route 136301 (D4397) to deny FMG's application. *Id.*

13. On February 1, 2022, FMG submitted a Request for Administrative Hearing to GDOT regarding the denial of the Multiple Message Sign Application. *See* Petitioner's Exhibit 7.

14. It is undisputed that, given the distance, topography, foliage, and development in the area, FMG's two signs (C0585 & D4397) are not visible from each other. *See* Testimony of Bart Holt; Petitioner's Exhibit 8.

15. The evidence presented at hearing also established that when one drives along State Route 520 towards C0585, the existing multiple message sign along State Route 136301 (D4397) is not noticeable. *See* Testimony of Bart Holt; Petitioner's Exhibit 9 (video showing driver's view of car traveling along State Route 520 starting before State Route 136301 and ending at C0585).

16. The Department acknowledged that D4397 was permitted on State Route 136301 because that is the route that the sign is located on even though D4397 is within 660 feet of both State Route 136301 and State Route 520. *See* Testimony of Russell Kvistad.

17. The Department does not permit signs in reference to more than one route, but instead makes a determination – as it did with D4397 – as to which route the sign is being directed towards for display purposes.

III. Conclusions of Law

1. Petitioner is an applicant for a permit to operate an outdoor advertising sign. Therefore, Petitioner bears the burden of proof. *See* Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2. Outdoor advertising in Georgia is governed by the Georgia Outdoor Advertising Control Act (“the Act”), which is codified at O.C.G.A. §§ 32-6-70 through 32-6-97.

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.

4. The Department is also authorized “to promulgate rules and regulations governing the issuance and revocation of permits for the erection and maintenance of outdoor advertising” authorized by the Act. 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.*

5. “[S]tatutes or ordinances which restrict an owner’s right to freely use his property for any lawful purpose are in derogation of the common law, they must be strictly construed and never extended beyond their plain and explicit terms.” *Monumedia II, LLC v. Dep’t of Transp.*, 343 Ga. App. 49, 56 (2017).

6. Any ambiguities in the language employed in zoning statutes “should be resolved in favor of the free use of property.” *Monumedia II*, 343 Ga. App. at 56.

7. When interpreting legislation, this Court must look first to “the text of the ordinance, and if the text is clear and unambiguous, we look no further, attributing to the ordinance its plain meaning.” *Monumedia II*, 343 Ga. App. at 56.

8. In doing so, we attribute to those words “their ordinary, logical, and common meanings, unless a clear indication of some other meaning appears.” Additionally, we read the ordinance as a whole “according to the natural and most obvious import of the language, without resorting to subtle and forced constructions, for the purpose of either limiting or extending its operation.” *Monumedia II*, 343 Ga. App. at 56.

9. By its plain language, O.C.G.A. § 32-6-75(c)(1)(C), which governs multiple message signs, prohibits multiple message signs placed within 5,000 feet of another multiple message sign on the same side of the highway. *See* O.C.G.A. § 32-6-75(c)(1)(C) (emphasis added).

10. For C0585, the highway is State Route 520, the highway where the sign is located *and toward which it is oriented*. *See* Testimony of Bart Holt; Testimony of Russell Kvistad (acknowledging there are no other multiple message signs within 5,000 feet of C0585 on the same side or State Route 520); Petitioner’s Exhibit 1 (establishing GDOT permitted sign to State Route 520).

11. For D4397, the highway is State Route 136301, the highway where the sign is located *and toward which it is oriented*. *See* Testimony of Bart Holt; Testimony of Russell Kvistad (acknowledging that D4397 was permitted toward State Route 136301); Petitioner’s Exhibit 3 (establishing GDOT permitted sign to State Route 136301).

12. Here, where the sign on State Route 520 is not visible from State Route 136301, the Department’s reading of O.C.G.A. § 32-6-75(c)(1)(C) to require 5,000 foot spacing from other multiple message signs on more than one highway is inconsistent with the purpose of the statute.

13. When the Department permitted D4397 in 2017, it made the determination that the sign would be permitted to State Route 136301. *See* Petitioner’s Exhibit 3. There is no basis to revisit this determination at this time.

14. According to the Georgia Court of Appeals in *Turner Communications Corp. v. Dep’t of Transp.*, 139 Ga. App. 436, 438 (1976), the 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 area along the highway. Thus, the distance requirement for separation of signs is

aimed at the impact on the traveling motorist – not at the literal distance between each sign.”

15. Here, there is no impact to the traveling motorist by permitting a multiple message sign located on and oriented towards State Route 520 *that is not visible from*, and is over 4,800 feet away from, a multiple message sign located on an entirely different highway – State Route 136301. *See* Respondent’s Exhibit 3 (establishing 4,884.5 feet between C0585’s location on State Route 520 and where State Route 520 and State Route 136301 intersect).


16. The orientation and visibility of the proposed sign must be considered to determine whether it is permissible. *See* O.C.G.A. § 32-6-72(4) – (5) (conditioning prohibition of outdoor advertising in part upon the visibility of the sign from the highway). It is clear that, in this case, the proposed signs are not visible from the highways

17. FMG additionally asserts that the Act is an unconstitutional content-based restriction on speech. FMG has made other constitutional arguments as well. This administrative court has no authority to declare statutes or regulations unconstitutional. Ga. Comp. R. & Regs. 616-1-2-.22(3). Therefore, this Court renders no decision regarding FMG’s arguments that the Act is unconstitutional.

IV. Decision

For the foregoing reasons, GDOT’s decision to deny FMG’s multiple message supplement for C0585 is **REVERSED**.

SO ORDERED, this 16th day of August, 2022.


Shakara M. Barnes
Administrative Law Judge

