FILED
OSAH
02/06/2024
Devin Hamilton, Legal Assistant

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

DUNLAP OUTDOOR ADVERTISING, INC., **Petitioner,**	**Docket No.: 2417919** **2417919-OSAH-DOT-OA-29-Beaudrot**
v.	**Agency Reference No.: 2417919**
GEORGIA DEPARTMENT OF TRANSPORTATION, **Respondent.**	

INITIAL DECISION

I. Introduction

This matter is an appeal by Petitioner Dunlap Outdoor Advertising, Inc. ("Dunlap" or "Petitioner")) from denial by the Georgia Department of Transportation (the "Department" or "Respondent") of Petitioner's application for a standard off-premises sign permit in Athens, Clarke County, Georgia.

The regulation of outdoor advertising in Georgia, is governed by the Outdoor Advertising Control Act (the "Act"), codified at O.C.G.A. §§ 32-6-70 *et. seq*. The Act implements "a statutory basis for the regulation of outdoor advertising" in Georgia, 1971 Ga. Laws 5, § 1. The General Assembly has charged the Department with responsibility for regulating outdoor advertising signs throughout the state under the Act. *Walker v. Dept. of Transp.*, 279 Ga. App. 287, 293 (2006).

More specifically, this case concerns standard off-premises signs, O.C.G.A. § 32-6-72(4)-(5), which are colloquially referred to as "billboards." To erect a billboard requires a permit from the Department to erect and maintain the billboard along the roadways, as well as the 100-foot spacing prohibition for such signs contained in O.C.G.A. § 32-6-75. *See* O.C.G.A. § 32-6-75(a)(20) (prohibiting one standard off-premises signs from being located "within 100 feet of another [such] sign on the same side of the highway").[1]

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[1] An off-premises sign is a sign that does not relate to activities conducted on the premises of the property where the sign is located—hence the name, "off-premises." *See* O.C.G.A. § 32-6-72(4)–(5); *see also* Ga. Comp. R. & Regs. r. 672-6-.03(1)(a)(1) (signs authorized by O.C.G.A. §§ 32-6-72(4)-(5) "are required to obtain a permit" when located within 660 feet of any "controlled route"). A "controlled route"

The hearing in this matter was held on January 11, 2024, before the undersigned at the Georgia Office of State Administrative Hearings, 225 Peachtree Street, NE, Atlanta, Georgia 30303. Petitioner appeared *pro se* in the person of Mr. Chris Dunlap, owner and president of Petitioner. The Department was represented at the hearing by Pearson K. Cunningham, Esq.

The witnesses at the hearing consisted of Mr. Dunlap and Respondent's employee, Buddy Sanders, Outdoor Advertising Manager. All documents tendered by the parties were admitted by stipulation.

For the reasons discussed below, after considering all of the evidence and the arguments of the parties, Respondent's action denying Petitioner's Application for the permit in issue is **AFFIRMED.**

II. Findings of Fact

1. In August 2023, Dunlap sought approval for a standard outdoor advertising permit for a proposed sign to be located approximately 775 feet east of milepost 10 on the northern side of Georgia State Route 10 ("GA-10"), in the City of Athens, Clarke County, Georgia. [OSAH Form 1 Attachments, Ex. A (App. No. 1001750); Resp. Hr. Ex. 1].

2. The parties agree that GA-10 is a controlled route along which the Department regulates outdoor advertising signs, and there is no dispute that Dunlap's proposed sign would be located within the regulatory control area of the Department (*i.e.* that it would be within 660 of the right-of-way along GA-10). [*see also generally* Hr. Audio at 26:00–28:00].

3. Dunlap's application was received by the Department's Outdoor Advertising Unit on August 16, 2023. It was processed by the Department and denied on October 16, 2023. [*See* OSAH Form 1 Attachments, Ex. B (Oct. 16, 2023 Denial Ltr. Re: App. No. 1001750); Resp. Hr. Ex. 2; Hr. Audio at 28:00–29:10].

4. The Department previously granted an application for a separate standard permit, GDOT Permit No. D4714, issued to Fairway Outdoor Funding, LLC d/b/a The Lamar Companies ("Lamar") for a location in the vicinity of the location that Dunlap submitted its application.

5. This Permit, Permit Number D4714, was issued by the Department to Lamar on August 10, 2022. [*See* Resp. Hr. Ex. 3 (Aug. 10, 2022 Ltr. Re: Permit No. D4714); *see also* Hr. Audio at 28:40–30:55]. The Lamar sign's location is less than 100 feet from Dunlap's proposed

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is a technical term for interstates and highways. *See* Ga. Comp. R. & Regs. 672-6-.01(g) (defining "controlled route").

location along the northern side of GA-10. [*See* Resp. Hr. Ex. 3 (Aug. 10, 2022 Ltr. Re: Permit No. D4714); *see also* Hr. Audio at 28:40–30:55].

6. On July 19, 2023, Lamar timely applied for and subsequently received from the Department a one-year extension (through August 10, 2024) for the erection of the sign at the location of the permit. [Resp. Ex. 6 (July 19, 2023 Ltr. Re: Extension of Permit No. D4714); Hr. Audio at 40:00–42:00].

7. In its application, Lamar re-used or re-submitted the local government certification form used in a prior application which is dated October 1, 2020. It reflected the applicant as "The Lamar Companies." Lamar modified the form to reflect the "Fairway Outdoor Funding LLC DBA The Lamar Companies" as the applicant. [*See* OSAH Form 1 Attachments, Ex. C (Req. for Admin. Hearing Re: App. No. 1001750) at internal p. 4 (attaching App. 100127 and App. 1001551)]. This was incorrect. The documentation is not contemporaneous to the application.

8. The location Dunlap applied for is parcel number 172D 010, while Permit No. D4714 exists on the adjacent parcel: parcel number 172D 011. [Resp. Ex. 4; Hr. Audio at 35:55–37:35; Resp. Ex. 1 (App. 1001750) at 3 (Dunlap App. denoting property information as parcel number 172D 010); Resp. Ex. 3 (Aug. 10, 2022) at 2 (Lamar App. denoting property information as parcel number 172D 011))].

9. The Department denied Dunlap's application pursuant to O.C.G.A. § 32-6-75(a)(20) because Dunlap's proposed location is within 100 feet of existing GDOT Permit No. D4714. [*See* OSAH Form 1 Attachments, Ex. B (Oct. 16, 2023 Denial Ltr. Re: App. No. 1001750); Resp. Hr. Ex. 2; Hr. Audio at 28:00–29:10].

III. Conclusions of Law

1. Because Dunlap is challenging the denial of its application for a permit, Dunlap bears the burden of proof. *See* Ga. Comp. R. & Regs. r. 616-1-2-.07(1)(b) ("[A]n applicant for a license that has been denied shall bear the burden [of proof]."). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2. There is no dispute that: (1) the location of Dunlap's proposed sign and the location of Permit No. D4714 are located along the same side of the GA-10, (2) the two locations are less than 100 feet in distance, and (3) under O.C.G.A. § 32-6-75(a)(20), Dunlap cannot receive a permit for its location so long as Permit No. D4714 remains a valid permit. O.C.G.A. § 32-6-75(a)(20) precludes the two signs from existing at the two locations simultaneously.

3. The dispositive issue in this case is whether Permit Number D4714 is a valid permit. Although Dunlap has correctly identified irregularities in the application filed to obtain Permit Number D4714, for reasons discussed below, the Court is persuaded that these irregularities do not rise to a level that require invalidation of Permit Number D4714.

4. Although no sign has been erected at the location as of the date of the hearing, Lamar was granted a 12-month extension through August 10, 2024, to erect its sign. Assuming Permit No. D4714 was valid when issued, the extension is valid and Permit No. D4714 remains valid through August 10, 2024.

5. When an applicant applies to the Department for a permit and the Department grants the application, the applicant/permittee has 12 months following the initial issuance of the permit to erect the sign. O.C.G.A. § 32-6-74(a) ("Permits and renewals thereof shall be issued for and shall be valid only if the sign is erected and maintained in accordance with this part during the 12- month period next following the date of issuance."). If the sign is not erected within this period, then the permit expires. Ga. Comp. R. & Regs. r. 672-6-.08(3)(a).

6. Upon request made to the Department prior to the expiration of this period, however, the Department is authorized to grant a single, additional 12-month extension to a permit holder to erect the sign. O.C.G.A. § 32-6-74(a) ("As to permits for the initial erection of an outdoor advertising sign, one 12 month extension may be granted so long as a written request is submitted to the department at least 30 days prior to expiration along with a fee of $35.00.").

7. The Department is not authorized to grant any further extensions to Lamar. Rather, the permit holder must then re-apply for the permit on the business day following the expiration of the extended-permit period if it seeks to erect a sign at that same location. O.C.G.A. § 32-6-74(a) ("Multiple extensions shall not be granted as to the same permit, and the applicant shall not be allowed to reapply for the same site until the extension has expired[.]"); Ga. Comp. R. & Regs. r. 672-6-.07(5) ("Only one extension may be granted for a permit. The permit holder may not apply for a new permit at the same location where a permit has been extended until the business day following the expiration date of any extension.").

8. When Dunlap applied for its permit, Permit D4714 had not expired by its terms. It still has not expired. Therefore, so long as Permit D4714 is valid, the Department was obligated to consider Permit D4714 in its spacing calculation under O.C.G.A. § 32-6-75(a). *See* Ga. Comp. R. & Regs. r. 672-6-.05(e)(3) ("A sign may not be so located that when considered *in light of any permit previously granted* to the applicant or any other person, the spacing requirements, set forth in O.C.G.A. §§ 32-6-75 and 32-6-76, would be violated." (emphasis added)).

9. "Illegal signs," as defined by O.C.G.A. § 32-6-71(6), are ignored for purposes of a spacing requirement, Ga. Comp. R. & Regs. r. 672-6-.05(e)(3)(iv)(D). The Department

that Permit D4714 is a valid permit. Dunlap contends it is illegal as the application willfully used an out-of-date certification that was modified to reflect a different Lamar affiliated entity as the applicant. Dunlap argues that the effect of these actions by Lamar was to induce the Department to incorrectly issue Permit D4714.

10. Dunlap argues that Permit D4714 is not a valid permit because Lamar re-used or re-submitted an old local government certification form from a prior application when Lamar should have obtained a contemporaneous certification for the new application. [*See* OSAH Form 1 Attachments, Ex. C (Req. for Admin. Hearing Re: App. No. 1001750) at internal p. 4 (attaching App. 100127 and App. 1001551)] as part of its application. Dunlap suggests that the Lamar application was deliberately falsified and has been used to "tie-up" the space. Dunlap asserts that in relying on the out-of-date certification, the Department therefore issued Lamar's Permit D4714 in error. *See* Ga. Comp. R. & Regs. r. 672-6-.08(2)(b) (authorizing the Department to revoke a permit "issued in error").

11. In Response, the Department contends that the use of the 2020 local government certification does not affect the validity of Permit D4714 (issued in 2022). This is because the location and relevant zoning considerations in fact remain the same. The Department therefore contends that Permit D4714 remains a valid permit under the Act and relevant regulations.

12. From the Department's perspective, even assuming the use of the out-of-date certification in the application was incorrect and a more contemporaneous certification should have been obtained, this error does not vitiate the validity of Permit D4714. In effect, the Department argues that, even assuming the Department's decision was based on an error in relying on an out-of-date form that had been modified, it is a "no harm, no foul" error. The parties do not dispute that even if the form was out-of-date and not what should have been used in the application, the form was correct on the facts—i.e. the zoning status of the relevant site is still the same as reflected on the certification.

13. Code section 32-6-74 speaks to applications for outdoor advertising permits and provides in relevant part that, "[a]pplications for permits . . . shall be made to the department upon forms prescribed by the department, and that, "[u]pon receipt of a properly executed application and the appropriate fee for the erection or maintenance of a sign which may be lawfully erected or maintained pursuant to this part, the department shall, within 60 days, issue a permit authorizing the erection or maintenance, or both, of the sign for which application was made . . . ." O.C.G.A. § 32-6-74(a).

14. GDOT Rule 672-6-.04(1) addresses applications under O.C.G.A. § 32-6-74 and provides that an applicant must provide "a Local Government Certification for Outdoor Advertising," the purpose of which is to specify that the relevant local public official certifies that "the proposed structure is located in an area appropriate for such construction under local laws,

ordinances or regulations, if locally regulated, or that the jurisdiction has no such controls[.]" Ga. Comp. R. & Regs. r. 672-6-.04(1) and -.04(1)(f).

15. The Department's Outdoor Advertising Manager, Mr. Sanders, testified that the purpose of the certification form in issue is to facilitate the Department's review in determining that an off-premises sign would be located in an area "zoned commercial or industrial," or an area "unzoned commercial or industrial" by the local jurisdiction under the Act. *See* O.C.G.A. § 32-6-72(4)–(5); *compare* Ga. Const. Art. Ix, Sec. II, Para. IV (authorizing local jurisdictions to exercise "the power of zoning"). But a state-issued permit is not otherwise contingent upon a sign's compliance with local regulations, like local sign codes. *Compare* O.C.G.A. § 32-6-97 (authorizing "more restrictive" regulations at the local level). Rather, so long as a sign would comply with the Act and the Department's regulations—that is, so long as the sign "may be lawfully erected or maintained" under the Act—then the department "shall, within 60 days, issue a permit authorizing the erection or maintenance, or both, of the sign[.]" O.C.G.A. § 32-6-74(a). Whether a sign would comply with local regulations, is between the local jurisdiction and the sign owner. *See Monumedia II, LLC v. Dept. of Transp.*, 343 Ga App. 49 (2017) (separately analyzing whether sign complied with Act and local jurisdiction's sign regulations).

16. The evidence and testimony presented by Dunlap at the hearing did not establish that Permit D4714 was not otherwise invalid or otherwise improper under the Act. Again, the dispositive issue is whether the reuse of the out of date and improperly modified form is fatal.

17. On balance, the Department showed that the irregularities did not establish that Permit D4714 was issued factually in error. Again, the parties do not dispute that the information used on the doctored form is factually correct. The Court therefore cannot conclude that the Department's consideration of Lamar's application that led to the granting of Permit D4714 rose to the level of an "error," given Permit D4714 otherwise complies with the Act.

18. The Department can only ignore a spacing consideration under O.C.G.A. § 32-6-77 for "signs which are not lawfully erected or maintained." O.C.G.A. § 32-6-77. To be an "illegal sign" requires that the sign be maintained "without a permit." O.C.G.A. § 32-6-71(6). However, should Lamar erect its sign at Permit D4714 prior to the expiration of that permit's extension, then Lamar's sign would not constitute an "illegal sign" under the Act. Put differently, it would be lawful under the Act all else being the same.

19. Even if the Court were to conclude that the Department "issued [Permit No. D4714] in error," under GDOT Rule 672-6-.08(2)(b), based upon Dunlap's contention, however, the Court still would not be able to reverse the Department's denial.

20. GDOT Rule 672-6.08(2) provides a basis for the Department's revocation of a permit that the Department has "issued in error." *See* Ga. Comp. R. & Regs. r. 672-6-.08(2)(b).

does not provide authority for a competing sign owner to cancel a permit that the Department otherwise regards as valid—especially where the Department has discretion in the first instance to exercise its revocation authority. Such is the case here.

21. GDOT Rule 672-6.08(2)(b) provides that the Department *may* revoke a permit that was issued in error—not that the Department must or *shall* revoke such permit. *See TermNet Merchant Servs., Inc. v. Phillips*, 277 Ga. 342, 344 (2003) (explaining that "'shall' is a word of command"); *Belt Power, LLC v. Reed*, 354 Ga. App. 289, 294–95 (2020) (explaining that "may" "usually implies some degree of discretion" (quotation omitted)). So the Department's rule leaves it to the discretion of the Department as to whether it will—or will not—exercise its revocation authority. *See Bibb County v. Monroe County*, 294 Ga. 730, 738 (2014) ("because the statute prescribes no particular process by which the Secretary is to receive evidence and reach a decision, these matters fall within the Secretary's discretion").

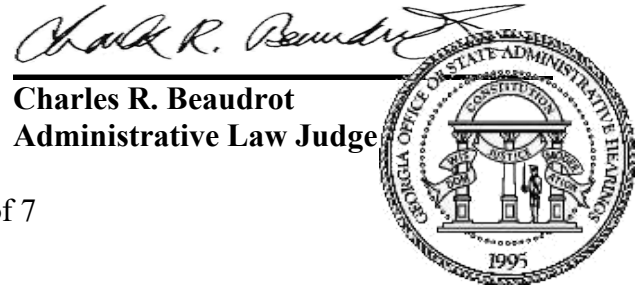
22. By analogy to the standards for issuance of a writ of mandamus, neither the Court nor Dunlap could compel the Department to exercise its discretion in whether to revoke Lamar's permit (even assuming an error had been made). *Bland Farms, LLC v. Ga. Dept. of Agric.*, 281 Ga. 192, 194–95 (2006) (holding that, because department secretary was granted discretion in enforcement under act, mandamus would not lie to force secretary to bring enforcement actions for alleged violations); *Hartsfield v. Salem*, 213 Ga. 760, 760 (1958) (government entity could not be compelled to exercise discretionary authority in permit revocation at behest of another); *Consolidated Gov't of Columbus v. P&J Beverage Corp.*, 344 Ga. App. 482, 486–87 (2018) ("Columbus exercised its discretion to grant The Bottle Shop's alcoholic beverage license, and has exercised its discretion to not revoke The Bottle Shop's alcoholic beverage license. P&J cannot use the mandamus procedure to direct the manner in which Columbus's discretion is exercised.").

23. In summary, Petitioner has correctly identified errors in the documentation submitted as part of the Lamar application for Permit No. D4714. These errors do not rise to a level to require the conclusion that the permit was issued in error and is, therefore, invalid.

IV. Decision

Accordingly, Respondent's decision to deny Petitioner's application for a standard off-premises sign permit in Athens, Clarke County, Georgia is **AFFIRMED.**

SO ORDERED, this 5th day of February, 2024.



Charles R. Beaudrot
Administrative Law Judge