



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Denial of an Outdoor
Advertising Sign Permit Application by the
Department of Transportation to Schober Outdoor
Advertising, LLC (Nieman Property)

Case No. TR-10-0037

FINAL DECISION

Schober Outdoor Advertising, LLC, (Schober) applied to the Department of Transportation (Department) for a permit to erect and maintain an off-premise sign to be located adjacent to State Trunk Highway 13 in the Town of Spencer, Marathon County. The Department denied the application. On September 7, 2010, Schober filed a request for a hearing with the Division of Hearings and Appeals to review the decision issued by the Department. Pursuant to due notice, the Division of Hearings and Appeals held a hearing in this matter on February 2, 2012, in Madison, Wisconsin. Mark Kaiser, Administrative Law Judge, presided.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Schober Outdoor Advertising, LLC, by

Adam Schober
Schober Outdoor Advertising, LLC
123 West Washington Avenue, #401
Madison, WI 53703

Wisconsin Department of Transportation, by

Attorney Paul E. Nilsen
DOT - Office of General Counsel
P.O. Box 7910
Madison, WI 53707-7910

The Administrative Law Judge issued a Proposed Decision in this matter on March 9, 2012. The Department filed a letter in support of the Proposed Decision. No other comments on the Proposed Decision were received. The Proposed Decision is adopted as the final decision in this matter.

Findings of Fact

The Administrator finds:

1. Schober Outdoor Advertising, LLC, (Schober) is engaged in the outdoor advertising business. By application dated May 24, 2010, Schober applied to the Wisconsin Department of Transportation (Department) for a permit to erect and maintain an off-premise outdoor advertising sign along the northeast side of State Trunk Highway 13 (STH 13) approximately 600 feet south of County Trunk Highway "F" (CTH "F") in Marathon County (exh. R1). The site of the proposed sign is on land owned by James Nieman, Sr. At the time of the application, the stretch of STH 13 that passed the Nieman property was a two-lane, undivided highway running in a northwesterly-southeasterly direction. STH 13 is a federal aid primary highway.

2. By letter dated June 24, 2010, the Department denied the application (exh. R2). The reason for the denial was that the proposed location for the sign was within 300 feet of the end of the taper of an acceleration lane for the intersection of CTH "F." Wis. Admin Code § Trans 201.06(1) requires that an outdoor advertising sign be located at least 300 feet from an intersection.¹ An intersection is defined as beginning or ending at any pavement widening for the intersection. According to plan and profile sheets for a highway improvement project for the stretch of STH 13 that passes the Nieman property, the pavement widening for the bypass lane from the intersection with CTH "F" ends at station 243 (exh. R6).² Three hundred feet from that point is at station 240. Six hundred feet from the centerline of CTH "F" would be at station 240 plus fifty feet. In other words, fifty feet less than 300 feet from the end of the pavement widening for the intersection.

3. Schober filed an amended application for an outdoor advertising permit to erect a sign on the Nieman property (exh. R3). The amended application changed the proposed location for the sign to 420 feet from CTH "F." This location is at approximately station 242 on the plan and profile sheets and is also less than 300 feet from the end of the pavement widening for the

¹ Wis. Admin Code § Trans 201.06(1) provides:

Signs visible from the main-traveled way of a controlled highway shall conform to the requirements of s. 84.30 (4), Stats., and to these rules. On non-freeway federal-aid primary highways outside of cities and villages, no sign may be adjacent to or within 300 feet of an interchange, intersection at grade, safety rest area, or wayside. Said 300 feet shall be measured along the highway from the beginning or ending of the pavement widening at the exit from or entrance to the main-traveled way of the primary highway.

² The plan and profile sheets include numbered points for scaling and location purposes. These points are called "stations" and are spaced at 100 foot intervals. For example, station 243 is 100 feet from station 242.

bypass lane from the intersection with CTH “F.” By letter dated August 13, 2010, the Department denied the amended application (exh. R4).³

4. At the time the application was filed, plans had been developed for reconfiguring the roadways in the vicinity of the Nieman property. The plans included the relocation of two intersecting roads, CTH “F” and Karau Avenue, and constructing a median between the two lanes of STH 13. Adam Schober requested that the Department reconsider the application based on the proposed reconfiguration.

5. The pavement widenings that are part of the intersections with CTH “F” and Karau Avenue are in the opposite lane from the one that abuts the Nieman property. The parties do not dispute that intersections on the opposite side of an undivided highway are to be taken into consideration for spacing of outdoor advertising signs, but not intersections on the opposite side of a divided highway. Schober’s contention is that after the highway improvement project is completed, the stretch of STH 13 that passes the Nieman property should be considered a divided highway. Therefore, the pavement widenings for the intersections with CTH “F” and Karau Avenue should not be considered for spacing requirements for the proposed sign site on the Nieman property. There is no statutory definition of a “divided highway.”

6. Mark Morrison, a traffic engineer for the Department, testified that the generally accepted definition of a divided highway for engineering purpose is one with a continuous median extending for miles. STH 13 in the vicinity of the Nieman property has a median from approximately station 221 to station 250 (testimony of Anthony Culbert). Based on Mr. Culbert’s testimony, the median at this location would extend less than 3000 feet. Mr. Morrison testified that this median is considered an intersection control, not a divided highway. Schober did not present any evidence to refute Mr. Morrison’s testimony.⁴ Based on Mr. Morrison’s testimony, STH 13 in the vicinity of the Nieman property is not a divided highway. The proposed site is not eligible for an outdoor advertising permit and the Department’s denial of Schober’s application must be affirmed.

³ In a hand drawn diagram attached to the amended application, Schober actually identifies a different location as the site for the proposed sign. On the diagram, Schober places the proposed location of the sign at a distance of 420 feet from the end of the CTH “F” widening. This site was never evaluated by the Department. The Department considered the proposed site identified on the actual application, not the attached diagram. At the hearing, the attorney for the Department conceded that at the time the application was filed this location would have been eligible for an outdoor advertising sign permit. However, because of subsequent construction, that site is no longer eligible for a permit.

⁴ Adam Schober presented a definition of “divided highway” from a U.S. Department of Transportation document (exh. 3) and another found at Wis. Stats. § 340.01((15)). Mr. Schober acknowledged that neither of these definitions was intended to apply to outdoor advertising regulation. Rather he offered these definitions because of the absence of any definition for “divided highway” specifically applicable to outdoor advertising regulation.

Conclusions of Law

The Administrator concludes:

1. The site for which Schober Outdoor Advertising, LLC, has applied for an outdoor advertising permit is less than 300 feet from an intersection. Pursuant to Wis. Admin Code § Trans 201.06(1), this site does not meet spacing requirements for an outdoor advertising sign and is not eligible for an outdoor advertising sign permit.

2. Pursuant to Wis. Stat. §§ 84.30(18) and 227.43(1)(bg) the Division of Hearings and Appeals has the authority to issue the following orders.

Proposed Order

The Administrator orders:

For the reasons stated above, the Wisconsin Department of Transportation's denial of the application for an outdoor advertising sign permit filed by Schober Outdoor Advertising, LLC, is **AFFIRMED**.

Dated at Madison, Wisconsin on March 27, 2012.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____
David H. Schwarz
Administrator

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. The Division of Hearings and Appeals shall be served with a copy of the petition either personally or by certified mail. The address for service is:

DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.