



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

In the Matter of the Denial of a Sign Permit
Application by the Department of Transportation
to Jones Sign (Property Owned by Gerald Nolan)

Case No.: TR-11-0035

FINAL DECISION

On August 10, 2011, the Department of Transportation (Department) denied a sign permit application to Jones Sign Company (Jones). The proposed sign would be located along Highway 45 in the Town of Larrabee, Waupaca County, Wisconsin on the Gerald Nolan property. By letter dated August 16, 2011, Larry Sidman, on behalf of Jones, requested a hearing pursuant to Wis. Stat. § 84.30 to review the Department's removal order. In response to the request, the administrative law judge assigned to the matter conducted a prehearing conference on September 30, 2011. During the prehearing conference, the attorney for the Department indicated that she intended to file a Motion for Summary Judgment in this matter. Accordingly, no evidentiary hearing was scheduled and a briefing schedule for the motion was established.

In accordance with the established schedule, the Department filed its motion and a brief and an affidavit in support of its motion on November 14, 2011. Jones filed a response brief and an affidavit in support of its response on December 15, 2011. The Department filed a reply brief and motion to strike the affidavit filed by Jones on January 6, 2012. On January 9, 2012, Jones filed a response to the Motion to Strike the Affidavit of Jason Snyder. And, on January 12, 2012, the Department filed a reply to Jones' response.

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

Jones Sign Company, by

Attorney Jeffrey F. Jaekels
Wanezek & Jaekels, S.C.
P. O. Box 22250
Green Bay, WI 54305-2250

Wisconsin Department of Transportation, by

Attorney Kathleen M. Batha
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 22, 2012. On April 5, 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.

Pursuant to Wis. Admin Code § HA 1.10(2), the Division of Hearings and Appeals follows the procedure Wis. Stat. § 802.08 in ruling on motions for summary judgment. The purpose of summary judgment is to obviate the need for a trial where there is no genuine issue to any material fact. *Heck & Paetow Claim Service, Inc. v. Heck*, 93 Wis. 2d 349, 286 N.W.2d 831 (1980). Summary judgment is not available if any disputed facts exist or if reasonable inferences leading to conflicting results may be drawn on the basis of uncontested facts. *Tomlin v. State Farm Mut. Auto Liability Ins. Co.*, 95 Wis. 2d 215, 290 N.W.2d 285 (1980).

The methodology for summary judgment is that the court first examines the pleadings to determine whether claims have been stated and a material fact issue is presented. If the complaint states a claim and the pleading show the existence of factual issues, the court examines the moving party's affidavits for evidentiary facts admissible in evidence or other proof to determine whether that party has made a *prima facie* case for summary judgment. If the moving party has made a *prima facie* case, the court examines the affidavits submitted by the opposing party for evidentiary facts and other proof to determine whether genuine issues exist as to any material fact, or reasonable conflicting inferences may be drawn from undisputed facts, and therefore trial is necessary. *In re Cherokee Park Plat*, 113 Wis. 2d 112, 334 N.W.2d 580 (App. 1983).

In this matter, the only issue is whether the site of the proposed outdoor advertising sign is a "business area" as defined at Wis. Stats. § 84.30(2)(b). No factual disputes exist. The only dispute is the interpretation of the Waupaca County zoning ordinances. Summary Judgment is appropriate in this matter. The Department's Motion to Strike the affidavit of Jason L. Snyder based on his lack of competency to testify as to the intent of the zoning ordinances is denied. Mr. Snyder's affidavit simply identifies the provisions of the Waupaca County zoning ordinances applicable to outdoor advertising signs. However, as discussed below Mr. Snyder's testimony is not material to the issue that needs to be decided in this matter.

Findings of Fact

The Administrator finds:

1. The Jones Sign Company (Jones) is engaged in the outdoor advertising business. By application dated June 22, 2010, Jones applied to the Wisconsin Department of Transportation (Department) for a permit to erect and maintain an off-premise outdoor advertising sign along the southwest side of United States Highway 45 (USH 45) in the Town of Larrabee, Waupaca County. USH 45 is a federal aid primary highway. The site of the proposed sign is on land owned by Gerald Nolan.
2. The site of the proposed sign is zoned as RI-G (Rural Industrial-General). Section 5.0 of the Waupaca County zoning ordinances is a table which, for the various zoning

classifications, indicates whether different land uses are permitted, permitted with a site plan, or is a conditional use. For RI-G zoning, all the allowed commercial and industrial uses are either permitted with a site plan or as a conditional use.

3. By letter dated August 10, 2011, the Department denied the application. The reason for the denial was that the zoning of the proposed location is “non-compliant for Off Premise advertising.” Specifically, the Department concluded that pursuant to Wis. Stats. § 84.30(2m), the proposed site is not a business area for purposes of Wis. Stats. § 84.30.

4. As explained below, the proposed site is not eligible for an outdoor advertising permit and the Department’s denial of Jones’ application must be affirmed.

Discussion

The only issue that needs to be decided in this matter is whether the site of the proposed sign is a business area. The answer to this question is a function of the site’s zoning. The applicable statutory scheme for the proposed site is clear. Pursuant to Wis. Stats. § 84.30(3)(d), after March 18, 1972, the only off premise advertising signs that can be erected along federal-aid highways are ones that will be located in business areas. “Business area” is defined at Wis. Stats. § 84.30(2)(b). Wis. Stats. § 84.30(2)(b) provides:

“Business area” means any part of an adjacent area which is zoned for business, industrial or commercial activities under the authority of the laws of this state; or not zoned, but which constitutes an unzoned commercial or industrial area as defined in par. (k).

The determination that a proposed sign site is in a “business area” is further limited by Wis. Stats. § 84.30(2m). Wis. Stats. § 84.30(2m) provides:

Conditional uses and special exceptions not considered. No uses of real property that are authorized by special zoning permission, including uses by conditional use, special exception, zoning variance or conditional permit, may be considered when determining whether the area is a business area.

In response to the Department’s motion, Jones submitted the affidavit of Jason L. Snyder, the Deputy Zoning Administrator for Waupaca County. Mr. Snyder cites Section 10 of the Waupaca County zoning ordinances and avers that no special zoning or site plan review is required by the ordinance for the erection of an outdoor advertising sign. Mr. Snyder further avers that the erection of outdoor advertising sign is not a conditional use under Waupaca County’s zoning ordinances. Mr. Snyder’s affidavit misses the point. The issue is not whether the Waupaca County’s zoning ordinances restrict the location of outdoor advertising signs, but whether the proposed site of the subject sign is a “business area” for purposes of Wis. Stats. § 84.30.

Although Waupaca County’s RI-G zoning allows some commercial and industrial uses, it permits those uses only with a site plan or as a conditional use. Pursuant to Wis. Stats. § 84.30(2m), such a site is not a business area for purposes of Wis. Stats. § 84.30. Accordingly, the proposed site on the Nolan property is not eligible for an outdoor advertising permit. The

fact that Waupaca County does not require any special zoning permission for the erection of outdoor advertising signs is not material. Section 10.03 of the Waupaca County zoning ordinances recognizes the Department's regulation of outdoor advertising along state and federal highways, such as USH 45. Wis. Stats. § 84.30 only allows the erection of outdoor advertising signs in business areas. The Nolan property is not a business area and, therefore, is not eligible for an outdoor advertising permit.

Conclusions of Law

The Administrator concludes:

1. The site for which Jones Sign Company has applied for an outdoor advertising permit is not a "business area" for purposes of Wis. Stats. § 84.30 and, therefore, 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.

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 Jones Sign Company is **AFFIRMED**.

Dated at Madison, Wisconsin on April 13, 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.