

EAST LAMPETER TOWNSHIP ZONING HEARING BOARD

IN RE:

Application of Dakota Outdoor, LP, :
appealing an Enforcement Notice for a : Case No. 2016-15
sign on property located at 2280 Lincoln :
Highway East in East Lampeter Township :

DECISION

I. FINDINGS OF FACT

1. Applicant is Dakota Outdoor, LP, a business entity with an address of 1230 Belle Meade Drive, Lancaster, Pennsylvania 17601.
2. The property/sign, which is the subject of this zoning application, is located at 2280 Lincoln Highway East, Lancaster, Pennsylvania 17601, and is in the Commercial (C-2) Zoning District.
3. Applicant is the owner of the sign.
4. On or about March 8, 2016, East Lampeter Township issued an Enforcement Notice indicating that the sign at 2280 Lincoln Highway East was in violation of Section 1604.24 of the East Lampeter Township Zoning Ordinance in that the message on the sign was changing more than once in a 24-hour period.
5. Applicant filed an appeal of the Enforcement Notice by Application received on April 11, 2016. The deadline for filing the appeal had been extended to that date by agreement of Applicant's counsel and East Lampeter Township.
6. Applicant's application was properly advertised and the property posted as required by law.
7. The Board scheduled a public hearing on Applicant's application for May 12, 2016.
8. Prior to the hearing, the Township and Applicant stipulated that a revised Enforcement Notice would be issued to reflect the amended Section 106.24 of the Zoning Ordinance; that the appeal previously filed would apply to the revised Enforcement Notice; and that the hearing on the merits of the appeal would be continued to May 26, 2016.

9. The Board held a public hearing on Applicant's application on May 26, 2016.
10. The sign at issue is a 300-square foot billboard located on property located at 2280 Lincoln Highway East, which was previously owned by the Strasburg Railroad.
11. Applicant acquired the billboard on or about November 2, 2015.
12. At the time of the issuance of a sign permit in or about July 2010, the billboard, as required by the Township and as agreed to by the then-owner, Strasburg Railroad and its consultant, Dennis Gehringer, the sign was permitted to change its message no more than once in any 24-hour period. (See Applicant's Exhibit No. 1).
13. The parties stipulated that, at all times from the date of issuance of the permit until Applicant's acquisition of the sign in November, 2015, the sign's message did not change more than once in any 24-hour period.
14. At the time of issuance of the sign permit in July, 2010, the billboard was a permitted use in the Commercial (C-2) Zoning District.
15. By Ordinance No. 304, dated May 13, 2014, effective May 18, 2014, the Township amended Section 106.24 of the Zoning Ordinance deleted a billboard as a permitted use in the Commercial (C-2) Zoning District and also amended Section 1604.24 of the Zoning Ordinance to provide as follows: "24. Except for time and temperature signs and except for billboards using digital technology meeting the standards set forth, no animated, sequential, intermittent, flashing, rotating or oscillating signs shall be permitted."
16. The billboard at issue became a non-conforming sign on May 18, 2014, when billboards were no longer permitted in the Commercial (C-2) Zoning District.
17. Subsection 4 of Section 1604.24 addressed billboards installed and operated with digital technology and allowed, inter alia, messages to be changed no more frequently than 10 seconds.
18. At the time of the enactment of Ordinance 304, the billboard was being operated to allow the display face to change only once every 24 hours.
19. Section 1607(1) of the Zoning Ordinance permitted non-conforming signs to continue to be displayed so long as there was no increase in the nonconformity in any way.
20. Dennis Gehringer, the consultant for the applicant for the sign permit acquired for the sign in July, 2010, acknowledged that the sign was permitted to change its display

face no more than once in any 24-hour period and that the applicant at that time agreed to that restriction.

21. At all times prior to May 18, 2014, the date on which the billboard at issue became nonconforming, the sign was operated by changing the display only once in any 24-hour period.

22. David Sinopoli, Assistant Zoning Officer for East Lampeter Township, indicated he was never contacted by any representative of Applicant, prior to Applicant's acquisition of the billboard, to determine any zoning issues or restrictions on the use of the billboard.

23. Applicant is not permitted to expand the use of a nonconforming billboard in any way and has done so by increasing the frequency of the changing of the display face of the billboard, in violation of both 1604.24 and Section 1607(1) of the Zoning Ordinance.

24. The Township's Enforcement Notice properly identified a violation of the zoning ordinance, and Applicant's appeal of that Notice must be denied.

II. CONCLUSIONS OF LAW

1. Applicant's application was properly filed, advertised and the property posted as required by law.

2. The subject property is located in the Commercial (C-2) Zoning District.

3. Applicant timely filed an appeal of the Enforcement Notice issued by the Township for the billboard at issue.

4. The billboard is a nonconforming sign that may not be increased in nonconformity in any way from what existed on May 18, 2014, the date on which Ordinance 304 made the billboard nonconforming.

5. At the time of Applicant's acquisition of the sign in November, 2015, the sign was being operated by changing the display face no more than once in any 24-hour period.

6. Section 1604.24 was amended to include the requirement that the operation of the sign was a requirement for allowing the change of message no more frequently than every 10 seconds.

7. At the time of the enactment of Ordinance 304, the billboard was being operated with the restriction that the display face could change no more frequently than once in any 24-hour period.

8. Applicant's expanded use of the billboard by changing the display face approximately every 10 seconds violated Section 1604.24 of the Zoning Ordinance and also violates Section 1607(1) of the Zoning Ordinance in that it expands the nonconforming use of the billboard.

9. The Board concludes that the Enforcement Notice was properly issued and that Applicant's appeal of the Enforcement Notice must be denied.

III. DISCUSSION

By enactment of Ordinance 304 on May 13, 2014, the Board of Supervisors made billboards a nonconforming use in the Commercial (C-2) Zoning District. At that time the level of use of the billboard determined the ability of the user, or any subsequent purchaser of the billboard, to use it in the future, in that Section 1607(1) does not allow the expansion of the nonconformity of a sign in any way.

The same ordinance also made changes to Section 1604.24 of the Zoning Ordinance. It recognized that changing standards for billboards would allow more frequently changing messages than had been allowed in the past by the Township. In amending the Ordinance, the supervisors addressed the issue by requiring that the capabilities of the technology that was installed on the billboard was an issue but also imposed a requirement relating to the operation of the billboard by adding the "operated with" in the introductory section of subsection 4. That language makes clear that the manner in which a billboard was operated is a crucial factor in determining the use moving forward. If capabilities of technology were the only criterion for allowing the changing of the message, as advocated by Applicant, the words "operated with" would be superfluous. Were, as here, the billboard is no longer a permitted use, the language is important, because it limits the manner in which the billboard may be operated.

Applicant's reliance on the Kegerreis case is misplaced. In that case, Judge Ashworth identified that a municipality may adopt an ordinance which is more restrictive of electronic billboards than federal or state regulation. That is precisely what the Township did in enacting Ordinance 304, in that it imposed a requirement of the operation of the billboard. Where, as here, the billboard was operated as stipulated by everyone to allow a change in the display no more than once in any 24-hour period, that standard becomes the standard in a district in which a billboard would no longer be permitted. That fact alone mandates the dismissal of the appeal of the Enforcement Notice.

It is also noteworthy to point out the fact that the Applicant apparently never even bothered to do any due diligence on the use of the billboard by contacting the Township prior to acquisition. David Sinopoli, Assistant Zoning Officer for the Township, indicated he was never contacted by anyone from Applicant concerning any inquiry about the sign prior to the change in ownership. Devon Wagner, Applicant's representative, testified that he contacted Mr. Sinopoli and was told that the sign could change display faces every 10 seconds. It is for this Board to assess credibility; it is difficult to imagine Mr. Wagner's description of the facts, since it would make no sense for Mr. Sinopoli to issue an enforcement notice for an issue for which he allegedly provided directly contrary information. The more reasonable interpretation of the testimony is that Mr. Wagner did not inquire as to the permitted use of the billboard prior to Applicant's acquisition of it.

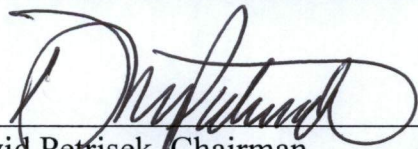
Common sense also militates in favor of the Township's position. It is inconceivable to imagine a situation in which a billboard that was permitted to change its display face once in any 24-hour period and did so for more than five years could now be permitted to change its display face as many as 8,640 times in a 24-hour period, especially in light of the fact that the billboard is no longer a permitted use in the district in which this billboard is located. This is exactly the result that the Applicant is advocating, and it is simply not supported by the facts or the law.

It is also important for the Board to note the nature of this proceeding. It is simply an appeal from an Enforcement Notice and not a request to allow the use of the billboard as proposed by Applicant. Applicant appears to be asking the Board to rule that the use of the sign is permitted in the manner proposed by Applicant. It seems clear that it is not, given the fact that the billboard is not even permitted in the underlying zoning district and certainly may not be expanded in the manner proposed by Applicant.

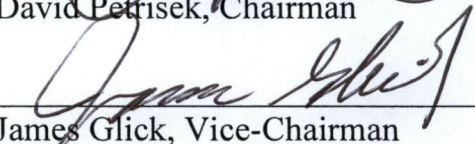
IV. DECISION

For the reasons set forth above, the Board dismisses Dakota Outdoor, LP's, appeal of the Enforcement Notice issued by East Lampeter Township for the billboard located on property at 2280 Lincoln Highway East, Lancaster, Pennsylvania

ZONING HEARING BOARD OF THE
TOWNSHIP OF EAST LAMPETER



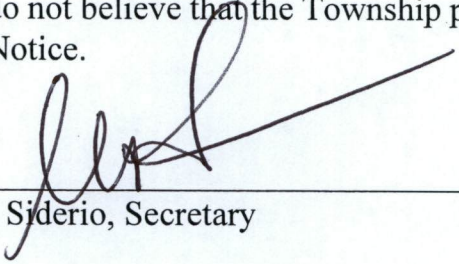
David Petrisek, Chairman



James Glick, Vice-Chairman

DISSENTING OPINION:

I dissent from the foregoing Decision. I do not believe that the Township presented sufficient evidence to support the Enforcement Notice.



Walter Siderio, Secretary

Dated and filed June 23, 2016, after hearing held on June 12, 2016.

The undersigned certifies that a copy of this Decision was served upon all parties on or prior to June 24, 2016.

