

**BOARD OF ZONING APPEALS
MINUTES
JULY 14, 2015**

The Board of Zoning Appeals met on Tuesday, July 14, 2015, at 5:15 p.m. in the Council Chambers, 45 E. Broad Street, Cookeville, Tennessee. The date of the meeting was changed at the June 11, 2015 meeting.

MEMBERS PRESENT: James Dial, Elwood Ervin, Jane Flatt, Sid Gilbreath, and Jon Ward.

STAFF PRESENT: James Mills, Jayne Barns, Travis Smith, Dan Rader, Danny Rader, and Mike Davidson.

STAFF ABSENT: Ken Young.

OTHERS PRESENT: William Birdwell, Deborah Sam, Greg Isaacs, Franklin Ammons, Ron Graves, Jerry Greer, Diane Roland, Dave Roland, and Laura Militana.

CONSIDER FOR APPROVAL THE MINUTES OF JUNE 11, 2015. Jon Ward made the motion to approve the minutes of June 11, 2015. Elwood Ervin seconded the motion and the motion carried unanimously. **APPROVED.**

Sid Gilbreath explained how the meeting would proceed to the audience. Mr. Gilbreath added that this is not a competition between billboard companies and that Mr. Roland did not have any legal standing on this issue, but he would allow him and his representative to speak since it was a Public Hearing.

CONSIDER A REQUEST FOR CONSIDER A REQUEST FOR AN ADMINISTRATIVE REVIEW CONCERNING DENIAL OF BILLBOARD PERMIT APPLICATION DUE TO SPACING REQUIREMENTS FOR AN OFF-PREMISE SIGN ON THE PROPERTY OWNED BY XI INVESTMENTS LLC AND LOCATED AT 465 UNIVERSAL DRIVE. REQUEST SUBMITTED BY RON GRAVES OF LAMAR TENNESSEEE LLC ON BEHALF OF JOHN D. STITES OF XI INVESTMENTS LLC. THIS ITEM WAS POSTPONED AT LAST MONTH'S MEETING. James Mills stated that Mr. Ron Graves of Lamar Tennessee, LLC, on behalf of John D. Stites of XI Properties, LLC, has submitted a request for an administrative review of the Planning Department's decision to deny a permit for a billboard on property located at 465 Universal Drive.

On May 18, 2015 Mr. Graves submitted to the Planning Department an application and related materials for the issuance of a Billboard Permit at 465 Universal Drive. On that same date, the Planning Department denied the application. The basis for the denial was the failure to demonstrate compliance with the separation requirements from another billboard as specified in Section 207.6P(5)(P) of the Cookeville Zoning Code. Said Section requires that within a corridor extending 100 feet from either side of the right-of-way of Interstate 40 no billboard shall be located within 1,000 feet of any other billboard on the same side of the street as measured along a line parallel to such street. It is the opinion of the Planning Department that the location at 465 Universal Drive will not meet

the minimum separation requirement from an existing billboard located at 1101 South Willow Avenue (Billboard Permit No. 2015-2, Billboard Number 26 City of Cookeville Billboard Inventory). Mr. Graves is appealing the decision of the Planning Department on the basis that the billboard located at 1101 South Willow Avenue is not oriented to Interstate 40 and therefore should not be considered in the separation requirements along Interstate 40.

The property located at 465 Universal Drive is identified as Parcel 102.14 on Tax Map 65. It is contiguous with Interstate 40 along its northern boundary. The parcel is zoned as CI, Commercial-Industrial Mixed Use. Billboards are permitted uses within the CI district.

The subject permit application was intended for the location of a billboard oriented to Interstate 40. As an Interstate billboard it is subject to the rules and regulations of the Tennessee Department of Transportation (TDOT) in addition to those of the City of Cookeville. A permit has been issued from TDOT for the location. With the exception of the minimum separation requirement, it appears that all other requirements of the Cookeville Zoning Code would be met.

The existing billboard at 1101 South Willow Avenue, from which the Planning Department has determined the proposed location would not meet the minimum separation requirements, is located on Parcel 93 on Tax Map 65. The owner of the parcel is Willoughby Holdings, Inc. The property is contiguous with Interstate 40 along its northern boundary. It is zoned as CG, General Commercial. Billboards are permitted uses in the CG district.

On April 14, 2015 the Planning Department issued Billboard Permit No. 2015-2 to Roland Digital Media, Inc. for the location of the billboard at 1101 South Willow Avenue. The permit was issued for the replacement of a billboard at an existing location. The replaced billboard was constructed under Sign Permit No. 332 which was issued to Lamar Advertising on June 7, 2001. The 2001 billboard was oriented to Interstate 40 and required a permit from TDOT. The permit for the 2015 billboard specifies that the billboard will face southeast opposite of Interstate 40. Correspondence from TDOT indicates that a TDOT permit was not required for a billboard located adjacent to State Route 135 (South Willow Avenue) provided the structure does not face or is not visible from I-40.

In January of 2015, Mr. Graves contacted the Planning Department regarding the relocation of the billboard at 1101 South Willow Avenue to another location along Interstate 40 for which Lamar had obtained a lease. He indicated that Lamar's lease at 1101 South Willow Avenue would soon expire and that another company had or was in the process of negotiating a lease with the property owner to replace the existing billboard. Mr. Graves also indicated that he had applied to TDOT for a permit for a new location on I-40.

Subsequent to Mr. Graves contacting the Planning Department, Mr. Dave Roland with Roland Digital Media contacted the Planning Department regarding the replacement of the billboard at 1101 South Willow Avenue at the same location. He indicated that he had obtained a lease from the property owner to construct and maintain a billboard on the

property. He also indicated that he would be applying for a permit from TDOT. On February 25, 2015 the Planning Department received an email from Mr. Roland indicating that the existing billboard at 1101 South Willow Avenue owned by Lamar Tennessee had been removed.

The Planning Department consulted with the City Manager and City Attorney and it was determined that since both sites would have to be permitted by TDOT that a permit should be issued to whichever party could first present evidence of a TDOT permit having been issued for a billboard. This decision was based primarily on the fact that once a TDOT permit was obtained for one of the sites the other site would no longer be eligible for a TDOT permit. It is the understanding of the Planning Department that a TDOT permit will expire at some point if a billboard is not erected. The Planning Department subsequently notified both Mr. Graves and Mr. Roland that a permit would be issued to whoever first obtained a permit from TDOT.

At the request of Mr. Roland, the Director of the Planning Department, City Manager and City Attorney met with Mr. Roland and his attorney on April 9, 2015. Mr. Roland inquired about the possibility of obtaining a permit from the city for the location at 1101 South Willow Avenue if a permit was not required from TDOT. Mr. Roland was advised that if he could verify from TDOT that they would not require a permit for the location and if all other requirements of the Cookeville Zoning Code were met then the city would issue a permit. On April 14, 2015, following the submittal of verification that a TDOT permit was not required and after receiving a complete application, the Planning Department issued Billboard Permit No. 2015-2 for 1101 South Willow Avenue. Said permit was issued for a single face billboard facing southeast and opposite Interstate 40.

Mr. Graves, on behalf of Lamar Tennessee, LLC, is not contesting the issuance of Billboard Permit No. 2015-2. It is Mr. Graves' contention that the billboard erected under Billboard Permit No. 2015-2 is oriented and located off State Highway 135 (South Willow Avenue) and should not be considered in the minimum separation requirements along Interstate 40. More specifically Mr. Graves is appealing the decision of the Planning Department to deny a permit for a billboard at 465 Universal Drive and is requesting that the Board authorize the issuance of a permit to Lamar for said location.

Staff recommended denial of the appeal.

Greg Isaacs, Attorney for Lamar Tennessee LLC, presented each member a paper copy of his power point presentation.

Note: The power point paper copy will be filed with the permanent records.

Mr. Isaacs reviewed the following timeline:

- **January 2015:** Director of Planning for the City of Cookeville James Mills tells Lamar that they will not be granted a City of Cookeville permit without TDOT permit since this is an interstate board. Mills suggest that Lamar wait to apply to Cookeville until they have proof of TDOT permit.

- **February 23, 2015:** Lamar cancels TDOT permit from prior board and applies for TDOT permit on new billboard as instructed.
- **February 26, 2015:** Roland applies for TDOT permit for sign on Willow Avenue.
- **April 7, 2015:** TDOT denies Roland's permit due to violation of spacing requirements (Proximity to Lamar board).
- **April 9, 2015:** Roland applies for City of Cookeville permit for board permitted to Willow Avenue.
- **April 13, 2015:** Roland submits letter from TDOT to City of Cookeville to supplement permit stated his board will **NOT** require a TDOT permit because it is not an interstate board. Specifically noted, "Facing opposite I-40". Had the Roland structure been facing interstate I-40 it would require TDOT permit. Further confirmation that these structures and **NOT** permitted to the "same street" as relevant to the City of Cookeville Sign Ordinance.
- **April 14, 2015:** Roland awarded City of Cookeville permit for 1101 S. Willow Avenue.
- **April 20, 2015:** Lamar granted TDOT permit for interstate board, permitted to I-40.
- **May 18, 2015:** Lamar applies for City of Cookeville permit with TDOT permit. Lamar is denied City of Cookeville permit based on Roland's City permit which the City of Cookeville asserted was a spacing violation.

Mr. Isaacs stated that they acted in good faith based on what Mr. Mills told them about whichever company received a TDOT permit would get a local permit.

Mr. Isaacs continued to say that the code does not address orientation of said billboard. One billboard is located on Universal Drive and other billboard is located on South Willow Avenue. These billboard locations are non-parallel separate streets.

Mr. Isaacs concluded that Lamar's city permit should have been granted because of the following: (1) They complied with direction from the Director of Planning, (2) Obtained a valid TDOT permit for Interstate I-40 board, (3) Applied for City of Cookeville permit in good faith with proper documentation of compliance with all relevant regulations, and (4) Spacing provisions applied by the City were inapplicable.

Jane Flatt asked whether the ordinance addressed the pole or the sign?

James Mills stated that the street that the Planning Department was looking at when reviewing the Zoning Code was I-40. Mr. Mills read section 207.6P(5)(O) which states that no billboard shall be located with 500 feet of any other billboard located on the same

street as measured in a radius from the center of the sign base; this spacing does not prohibit back to back signs on the same structure.

William Birdwell, Attorney on behalf of Roland Digital Media Inc., stated that the City codes are clear. The code does not provide an exception for the center of the post depending on how it is oriented and the code has nothing to do with who gets a state permit first, and this Board has no right to read that into the law.

Sid Gilbreath told Mr. Birdwell that he does not have the right to tell the Board what their rights are or what they can or cannot do.

Jon Ward and Sid Gilbreath wanted clarification on the measurement of 1,000 feet on billboards that were on the same side of the street and which street does the code reference.

James Mills stated that section 207.6P (5) (P) stated that no billboard located in a corridor extending a distance of 100 feet from either side of the right-of-way of Interstate 40 or State Highway 111 shall be located with 1,500 feet of any other billboard on the same side of the street as measured along a line parallel to such street.

Dan Rader, City Attorney, stated that TDOT's permit is based on orientation and has nothing to do with the corridor.

James Dial stated that it comes down to the interpretation of the code.

Elwood Ervin stated that in his opinion that both signs are in the corridor.

Sid Gilbreath asked if Roland's sign could be moved to face I-40.

Dan Rader replied that Roland's sign cannot face I-40 based on the permit issued to him by the City. If the sign was facing I-40 then Mr. Roland would have to get a TDOT permit.

Sid Gilbreath asked Mr. Birdwell why Mr. Roland was opposed to this billboard that was being appealed to by Lamar Tennessee LLC?

Mr. Birdwell replied that they wanted to preserve the application of the law as written.

Sid Gilbreath asked Mr. Birdwell what Mr. Roland's intentions if the Board rejects the appeal?

Mr. Birdwell replied to sell advertisement.

Jerry Geer owns the building between the two billboard signs and he was concerned that the signs would hurt his property value.

James Mills replied that he did not have any information that showed if the signs would decrease or increase his property values.

Sid Gilbreath asked the City Attorney Dan Rader what was the next course of action if the Board approves or denies the appeal.

Dan Rader responded that if the appeal is denied then Lamar could appeal the decision to Chancery Court and if the appeal is approved, then there is no further action.

Jon Ward stated that due to the fact that the billboards are oriented on two different streets with one being off Universal Drive and the other one being oriented off South Willow Avenue, then he felt that the separation requirement would not apply.

Jon Ward made the motion to approve the appeal by Lamar Tennessee LLC. Sid Gilbreath turned the Chair over to Jane Flatt and then Sid Gilbreath seconded the motion. Votes: Jon Ward – aye, Sid Gilbreath – aye, James Dial – aye, Jane Flatt – nay, and Elwood Ervin – nay. Votes 3-2. Motion carried. **APPEAL APPROVED.**

ADJOURNMENT: 6:15 P.M.

SUBMITTED FOR APPROVAL

SUBMITTED FOR RECORDING

**JAYNE BARNS CPS
PLANNING ASSISTANT**

**SID GILBREATH, CHAIRMAN
BOARD OF ZONING APPEALS**