

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF TRANSPORTATION

In the Matter of the Denial of Norb
Weber's Application For an Outdoor
Advertising Device Permit for a Location
Off Trunk Highway 15 in Stearns County,
Minnesota

FINDINGS OF FACT, CONCLUSIONS
AND RECOMMENDATION

A hearing was held on July 22, 2003 at the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401. The hearing was held pursuant to a Notice and Order for Hearing dated June 17, 2003.

David A. Phillips, Assistant Attorney General, 1800 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2134, appeared on behalf of the Department of Transportation (Department). Norb Weber, 6312 230th Street, St. Cloud, MN 56301, appeared on his own behalf. The Notice of Hearing was also published in the Transportation Regulation Proceedings, Notice and Hearing Bulletin, June 20, 2003.^[1] The final post-hearing submission was received on August 8, 2003.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Transportation will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Carol Molnau, Commissioner, Commissioner of Transportation, 395 John Ireland Blvd., Mail Stop 100, St. Paul, MN 55155, to ascertain the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF THE ISSUE

Did the Department of Transportation properly deny Norb Weber's Application for an Outdoor Advertising Device Permit?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Department enforces laws that control outdoor advertising along certain Minnesota highways.^[2]

2. One of the Department's advertising control technicians, Charles Bretz, observed a sign located on Trunk Highway 15 near the intersection with 230th Street in Stearns County, Minnesota. Exhibit 2 is a picture of the sign, advertising Weber's Barber Shop. Mr. Bretz notified Norb Weber, the owner of the sign, that placement of the sign along the trunk highway required a permit from the Department.^[3]

3. Mr. Weber applied for a permit for the sign. The sign advertises Mr. Weber's barber shop, which he operates in his home at 6312 230th Street. The sign is four feet by eight feet in size, with advertising on both sides of the sign.^[4] The sign is not located on the same property where Mr. Weber's home is located, but about two blocks away on property owned by the Christina Weber Trust.^[5] Mr. Weber does not use the land where the sign is located to conduct any part of his business.^[6]

4. Mr. Weber's sign is located in an area adjacent to the highway that is not zoned for business, industrial or commercial activities, nor is it located in an unzoned commercial or industrial area.

5. The Department denied the permit because the sign was not located on the business premises and was placed in an area zoned as "general agricultural" by the City of St. Augusta.^[7] At this time the land does not appear to be in production.^[8]

6. Mr. Weber has moved his sign back from the trunk highway right-of-way.^[9] The sign is visible but not readable from that distance, and he requests that the permit be issued so that the sign can be placed next to the trunk highway.

7. Mr. Weber acknowledges that the sign is not on the premises of his business, although he is a beneficiary of the Christina Weber Trust and has an interest in the property where the sign is located. He introduced photos of other advertising signs located along the Trunk Highway 15.^[10] There was no evidence that the signs depicted in the photos would require a permit.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Department and the Administrative Law Judge have jurisdiction to consider this matter.^[11]
2. The Department gave proper notice of the hearing and has complied with all applicable substantive and procedural requirements.
3. The applicant for a permit has the burden of proving that he is entitled to the permit by a preponderance of the evidence.^[12]
4. An "advertising device" is defined as "any billboard, sign, notice, poster, display, or other device visible to and primarily intended to advertise and inform or to attract or which does attract the attention of the operators and occupants of motor vehicles...."^[13] Mr. Weber's sign is an "advertising device."
5. Signs are subject to regulation when placed on a "primary highway", including a state trunk highway.^[14]
6. Mr. Weber's sign is located on a state trunk highway in an area zoned for agriculture and not in a "business area," zoned for business, industrial or commercial activities.^[15] Signs may not be placed in areas zoned for agriculture unless they fit certain exceptions set forth in the law.
7. Mr. Weber does not qualify for the statutory exception for signs located on the property where the sign is located, or others set forth in statute.^[16]

Based upon the foregoing conclusions, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the Commissioner deny Norb Weber's Application for an Outdoor Advertising Device Permit.

Dated this 26th day of August 2003.

S/ Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

Reported: Tape-recorded (2 tapes)

MEMORANDUM

Mr. Weber would like to display a sign advertising his barber shop on the trunk highway that runs near his property. However, business signage along certain state and federal highways is subject to the Federal Highway Beautification Act, the regulations promulgated under that Act, and the Minnesota Outdoor Advertising Control Act. The Declaration of Policy states:

It is hereby found and declared that in the interest of and to promote the general welfare of the people and to conserve the natural beauty of areas adjacent to certain highways, it is necessary to reasonably and effectively regulate and control the erection or maintenance of advertising devices on land adjacent to such highways. It is further declared that inasmuch as outdoor advertising is an integral part of the business and marketing function, an established segment of the national economy, and a legitimate commercial use of property adjacent to roads and highways, it should be allowed to operate where other business and commercial activities are conducted, and the regulation of outdoor advertising should occur by the application of reasonable regulatory standards consistent with customary use of outdoor advertising and zoning principles....^[17]

The limitations apply to a “primary highway” which includes a trunk highway.^[18] Signs visible to and intended to advertise to operators and occupants of motor vehicles are expressly regulated. There is no dispute that Mr. Weber’s sign meets the statutory definition of an “advertising device.”^[19] Nor is it disputed that he wishes to place the sign within an area “adjacent to” the trunk highway.^[20] However, advertising signs along designated highways are permitted only in a “business area,” as that term is defined in the statute.^[21] A business area is one that is zoned for business, industrial or commercial activities. The area where Mr. Weber would like to place his sign is zoned by the City of St. Augusta for general agricultural purposes, and not for business, industrial or commercial activities.^[22]

The applicable federal regulation states:

Commercial and industrial zones are those districts established by the zoning authorities as being most appropriate for commerce, industry, or trade, regardless of how labeled. They are commonly categorized as commercial, industrial, business, manufacturing, highway service or highway business (when these latter are intended for highway-oriented business) retail, trade, warehouse, and similar classifications.^[23]

Land zoned for agriculture does not meet this description.

Mr. Weber claims that he should be entitled to place his sign because it is adjacent to the property where his business is conducted. There is a limited exception for “advertising devices advertising activities conducted on the property on which they are located, including ... services rendered thereon....”^[24] However, that exception does not apply here. The sign is not located on the property where the business is located. The Department states that it will sometimes stretch this exception to include

“contiguous property” used by the business. However, Mr. Weber’s sign is located two blocks away on land that is not used by Mr. Weber’s business. The Department also contends that Mr. Weber does not own the land where the sign is located. It is not clear from the rule or statute that ownership of the land is significant. Regardless of who owns the land, Mr. Weber’s proposed sign does not fall within the exception for an “on-premise” sign because it is not on land used by the business.

Mr. Weber produced photos of other signs along the trunk highway. It is clear that some of the signs are excluded from regulation. For example, Exhibit 25 shows a public utility warning sign, and Exhibit 22 shows quilts for sale on the premises, both specifically excluded from regulation.^[25] Exhibit 21 shows a sign for a Century Farm, which may not be advertising, and may fall within the exception for historical markers authorized by state law.^[26] It is difficult to tell whether any or all of the other signs may be excluded either because of the particular type of advertising, or because of the zoning of the property where the signs are located. Regardless of the exceptions that may apply to other signs, Mr. Weber’s sign is within the reach of the statute and its placement is subject to the Outdoor Advertising Control Act.

BJH

^[1] Notice of Publication, on file.

^[2] See Minn. Stat. ch. 173, “Minnesota Outdoor Advertising Control Act, (2002).”

^[3] Ex. 4.

^[4] Ex. 1.

^[5] Exs. 7 and 8.

^[6] Testimony of Norb Weber.

^[7] Exs. 2 and 4.

^[8] Testimony of Charles Bretz, N. Weber.

^[9] Ex. 16.

^[10] Exs. 18-25.

^[11] Minn. Stat. § § 14.50, 173.07, 173.08.

^[12] Minn. R. 1400.7300, subp. 5 (“The party proposing that certain action be taken must prove the facts at issue by a preponderance of the evidence, unless the substantive law provides a different burden or standard.”)

^[13] Minn. Stat. § 173.02, subd. 2.

^[14] Minn. Stat. § 173.02, subd. 22.

^[15] Minn. Stat. § 173.02, subd. 17.

^[16] Minn. Stat. § 173.08, subd. 1 (3).

^[17] Minn. Stat. § 173.01.

^[18] Minn. Stat. § 173.02, subd. 22.

^[19] Minn. Stat. § 173.02, subd. 16.

^[20] Minn. Stat. § 173.02, subd. 8.

^[21] Minn. Stat. § 173.02, subd. 17.

^[22] Ex. 5.

^[23] 23 C.F.R. § 750.705 (a).

^[24] Minn. Stat. § 173.08, subd. 1 (3).

^[25] Minn. Stat. § 173.08, subd. 1 (3) and (5). “Public utility signs” are also excluded by Minn. Stat. § 173.02, subd. 6 (b).

^[26] Minn. Stat. § 173.02, subd. 6 (a), defining “official signs and notices.”