

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

**GEORGIA DEPARTMENT OF
TRANSPORTATION,**

Petitioner,

v.

R & E MOUNTAIN PROPERTIES,

Respondent.

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Docket No.:
OSAH-DOT-OA-1457463-55-Miller



**FILED
OSAH**

AUG 29 2014

**INITIAL DECISION
ORDER FOR REMOVAL OF ILLEGAL SIGN**

Kevin Westray, Legal Assistant

I. INTRODUCTION

On June 16, 2014, the Georgia Department of Transportation (“Department”) filed this action seeking authorization to remove an outdoor advertising sign and associated structure maintained by the Respondent, R & E Mountain Properties. The evidentiary hearing took place on July 7, 2014, before the undersigned administrative law judge. The Department appeared through its counsel, Ronald J. Freeman, Sr., Esq. The Respondent was provided with notice of the hearing but failed to appear.¹ Accordingly, the hearing proceeded without the Respondent’s participation. See Ga. Comp. R. & Regs. 616-1-2-.30(5).

After consideration of the evidence and arguments presented at the hearing, and for the reasons stated below, the Respondent is **ORDERED** to remove its outdoor advertising sign and associated structure as requested by the Department. If the Respondent should fail to comply with the removal order, the Department is authorized to enter the property and to disassemble and remove the sign and associated structure at the Respondent’s expense.

¹ The Respondent was served by certified mail delivered to 350 Minnehaha Trail, Blue Ridge, Georgia 30513. See Court file.

II. FINDINGS OF FACT

1.

The Department is the state agency responsible for regulating outdoor advertising in areas adjacent to state highways and other controlled streets. In that capacity, the Department conducts periodic inventories of outdoor advertising along controlled streets and issues permits for outdoor advertising in accordance with Georgia law. (Testimony of Beth Ann Perkins.)

2.

The Respondent owns and maintains an outdoor advertising sign adjacent to State Route 515 in the city of Blue Ridge, Fannin County, Georgia. The sign is located on the west side of the roadway at milepost 2.55 and advertises "Taste of Amish." During a periodic inventory, the Department identified the Respondent's sign as one for which a permit was required, but for which no permit had been issued. (Testimony of Ms. Perkins; Exhibit P-A.)

3.

A number of years ago, in 2007 or 2008, the Respondent applied for a permit for its Taste of Amish sign. However, the Department denied the application because the sign is located in a residential area. (Testimony of Ms. Perkins.)

4.

By letter dated July 10, 2013, the Department notified the Respondent that its Taste of Amish sign was not authorized under Georgia law. The letter further advised the Respondent that if the sign was not removed within thirty days, the Department would institute proceedings to remove the sign. Finally, the letter informed the Respondent of its right to appeal the Department's determination by submitting a written request for hearing within thirty days. The Respondent did not request a hearing. (Testimony of Ms. Perkins; Exhibit P-A.)

5.

On June 16, 2014, the Department initiated the current proceedings, seeking an order for the removal of the Respondent's sign at the Respondent's expense. (Testimony of Ms. Perkins; OSAH Form 1 and attachments.)

III. CONCLUSIONS OF LAW

1.

The Department bears the burden of proof in this matter. Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

The General Assembly has authorized the Department to regulate outdoor advertising in Georgia. O.C.G.A. § 32-6-70; Walker v. Dep't of Transp., 279 Ga. App. 287, 293 (2006). To exercise its authority, the Department may enter private land for the purpose of disassembling and removing a sign, provided that the sign has been "administratively determined to be illegal" following a hearing before an administrative law judge or other designee of the Commissioner. O.C.G.A. §§ 32-6-95(b), 32-6-96.

3.

Under O.C.G.A. § 32-6-72, "No outdoor advertising shall be erected or maintained within 660 feet of the nearest edge of the right of way and visible from the main traveled way of the interstate or primary highways in this state" This general prohibition is subject to the following six exceptions:

- (1) Directional and other official signs and notices;
- (2) Signs advertising the sale or lease of the property upon which they are located;

- (3) Signs advertising activities conducted or maintained within 100 feet of the nearest part of the activity as the dimensions of said activity are determined by department regulations, which regulations need not take into consideration the property lines of said activity;
- (4) Signs located in areas zoned commercial or industrial, which signs provide information in the specific interest of the traveling public;
- (5) Signs located in unzoned commercial or industrial areas, which signs provide information in the specific interest of the traveling public; and
- (6) Directional signs, displays, and devices about goods and services in the specific interest of the traveling public located in a defined area or areas approved by the United States Secretary of Transportation.

O.C.G.A. § 32-6-72. In this case, the evidence is undisputed that the Respondent's Taste of Amish sign has been erected and maintained in an area adjacent to and visible from State Route 515, a primary highway of Georgia, and that none of the enumerated statutory exceptions apply. Therefore, the Respondent's sign is an illegal sign. O.C.G.A. § 32-6-71(6).

4.

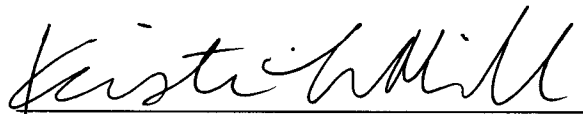
The Department proved, by a preponderance of the evidence, that the Respondent's sign is subject to removal under O.C.G.A. §§ 32-6-95(b) and 32-6-96.

IV. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Respondent is **ORDERED** to remove its outdoor advertising sign and associated structure located adjacent to State Route 515, on the west side of the roadway at milepost 2.55, in the city of Blue Ridge, Fannin County, Georgia. The Respondent shall be afforded 120 days to complete the removal, as provided in O.C.G.A. § 32-6-95(b). If the Respondent should fail to comply with the removal order, the Department is authorized to enter the property and to disassemble and remove the sign and associated structure at the Respondent's expense, pursuant to O.C.G.A. § 32-6-96. In that event, the Respondent shall reimburse the Department for its expenses

incurred for the disassembly, removal, transportation, and storage of the sign. O.C.G.A. § 32-6-96(c).

SO ORDERED, this 28th day of August, 2014.



KRISTIN L. MILLER
Administrative Law Judge