

Florida Legislature Grants Free View Easements to Billboard Companies

by:

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*Sign, sign everywhere a sign,
blocking out the scenery,
breaking my mind,
do this don't do that
can't you read the sign?*

Five Man Electrical Band

I. Introduction

According to the Staff Analysis for House Bill 273, there are an estimated 20,900 permitted outdoor advertising signs located on 13,700 billboard structures in the State of Florida. The Florida Legislature has passed legislation that, upon becoming law July 1, 2006, will grant the owners of these billboards permanent compensable view easements over public property without payment of compensation. This new law would prohibit trees and other vegetation that are part of a roadway beautification project from being planted in a legally established billboard "view zone." The new law would also prohibit sound barriers that are a component of a road improvement project from blocking a sign's visibility, and allow signs to be elevated above noise walls. This legislation is the second major victory achieved by billboard companies in recent times. In 2002, the Legislature passed a bill resulting in Section 70.20, Florida Statutes, which now requires cities and counties to pay billboard companies just compensation when billboards are removed by local ordinances. Prior to the enactment of this law, a local government could simply provide an amortization period for a sign and force its removal, in lieu of compensation.

In passing House Bill 273, the Legislature sought to correct two ongoing problems that interfered with a billboard's visibility from passing motorists. First, the view of many billboards became obstructed over time as the result of roadway beautification efforts where trees and vegetation were planted in public rights of way. In order to correct this situation, the legislation provides for permanent view corridors that limit both governments and private parties from planting vegetation in the public rights of ways of interstates, expressways, federal-aid primary facilities, and the State highway system. Notably, the law does not apply to privately owned property.

The second problem encountered by existing billboard owners was that the visibility of their signs was blocked by the construction of tall noise attenuation barriers associated with new road improvement projects. The new law will cure this problem by now allowing a billboard to be raised above a sound barrier wall, irrespective of any height limitations contained in state or local laws. However, if a local government should refuse to grant a height variance to allow a height increase, it must suffer the consequences by paying fair market value for both the sign and the underlying real estate.

II. Public View Easements Created

The new law providing permanent compensable view easements for billboard owners will amend Section 479.106, Florida Statutes, and establish view easements to allow unobstructed views of billboards by passing motorists. Notably, the billboard owners are not required to compensate the government for these air easement rights, and once the easement is established, it becomes a property right of the billboard owner. The scope of the easement is based on the speed limit wherein the billboard is located. For example, when a billboard is located along a public right of way where the posted speed limit is less than 35 miles per hour, the view easement zone is 350 feet. When, however, the posted speed limit exceeds 35 miles per hour, the protected view zone is 500 feet. These view zones must also be located within the first 1,000 feet as measured along the pavement's edge in the direction of oncoming traffic. In these view zones, roadway beautification projects, trees, or other vegetation are prohibited when plantings will or may, after future growth, screen a billboard from public view.

The legislation also establishes a process to ensure that the sign owner's newly acquired easement interest does not become impaired. If a sign's view zone should become obstructed, the sign owner is required to simply provide a 90-day written notice to the government or third party that it is encroaching in the easement and that it must remove the vegetation within 90 days. If the violation is not cured within the 90-day period, the sign owner can then file a claim in circuit court. In the event the court should determine that a violation has occurred, the court is required to award compensation to the owner that is equal to the lesser of the sign's lost revenue during the time of the sign's obstruction, or the fair market value of the sign.

III. Local Governments Must Allow Signs to be Elevated

The new legislation, which will result in an amendment to Section 479.25, Florida Statutes, would also allow the owner of a lawfully erected billboard meeting all state and federal requirements, to increase its height higher than an existing or future noise attenuation wall. The increase in height, however, is limited to the increase in height that is required to achieve the same degree of

visibility from the right of way which the billboard had prior to the erection of the wall.

The determination of whether a sign will actually be blocked by a wall is to be made by the FDOT prior to a wall's construction, who will then notify the local government of the problem. The local government is then required to advise the FDOT whether or not allowing an increase in height will violate its local sign regulations. The FDOT is eventually required to conduct a public hearing to consider the impact of constructing a noise wall on the billboard's visibility. The FDOT must provide notice to all of the property owners who have been identified as being impacted by a proposed highway's noise, who will be the beneficiaries of the noise wall. At the conclusion of the hearing, a vote of the impacted property owners must be taken, and if a majority of the impacted property owners vote to allow construction of the wall, the local government must then select one of three options: 1) allow an increase in the sign's height through a variance procedure; 2) allow the sign to be relocated or reconstructed at another location with the sign owner's consent; or 3) refuse to issue the permit and pay the fair market value of the sign to its owner, along with the associated interest in the real property.

IV. Mixed Feelings on the New Law

Naturally, the billboard companies are delighted with the legislation, and feel that it protects the profitability of their investments. They believed that it was unfair for local governments to issue sign permits and then allow trees to be planted – oftentimes intentionally – to block a sign's visibility. In a May 8, 2006 Tampa Tribune article, John Fleming, a spokesman for the Florida Outdoor Advertising Association, provided the sign industry's perspective stating, "That's like government allowing you to open a business and then pulling your telephone line." Fleming also noted that the new law "will not create a vegetative-free dead zone in front of a billboard" as the planting of low lying shrubbery and naturally occurring trees and vegetation are still allowed.

Notably, both the Florida League of Cities and the Florida Association of Counties initially opposed the new legislation. However, both groups eventually opted to forego challenging the bill after achieving concessions from the sign industry that "softened" the legislation. However, anti-billboard groups are outraged about the legislation and the fact that it not only impedes local governments' goal to eliminate billboards, but now provides an additional compensable property right for billboard companies in the form of private easements over property held in the public trust. In summing up the opposition's perspective, Bill Jonson, President of Citizens for a Scenic Florida, told the Tampa Tribune in a May 8, 2006 article that "Their philosophy says we will use public property and grant an air easement right, without requiring [billboard companies] to pay anything for that use of public property."

Regardless of whose side you are on in the ongoing billboard battle between local governments and the sign industry, Florida's Legislature has made it clear in its enactment of pro-property rights legislation, including the 2002 anti-amortization billboard legislation, the 2006 anti-*Kelo* legislation prohibiting the use of eminent domain for non-public purposes, along with this new sign view easement law, that the protection of property rights is considered paramount in the state of Florida.