



State of New Jersey

DEPARTMENT OF TRANSPORTATION
P.O. Box 600
Trenton, New Jersey 08625-0600

PHILIP D. MURPHY
Governor

FRANCIS K. O'CONNOR
Commissioner

TAHESHA L. WAY
Lt. Governor

STATE OF NEW JERSEY DEPARTMENT OF TRANSPORTATION

CLEAR CHANNEL OUTDOOR, INC.	:	FINAL DECISION
	:	
Petitioner	:	
v.	:	OAL DOCKET NO. TRP-06309-17
	:	
New Jersey Department of	:	
Transportation	:	
Respondent	:	AGENCY DOCKET NO. 2016-577
	:	
	:	

The Department of Transportation ("NJDOT") has proposed an outdoor advertising violation to Clear Channel Outdoor, Inc. ("CCO") dated October 11, 2016 seeking to revoke CCO's sign permit (#60354) approved by the NJDOT in 1993 ("CCO's sign" or "sign #1"). The 2016 violation is based on CCO's violation of the advertising rules by maintaining a sign without a valid permit as required by N.J.A.C. 16:41C-6.1(a). In addition, this matter involves the separate but related proposed denial of CCO's 2017 permit application to maintain the same sign #1 in its current built location. The 2017 application was denied because the proposed sign location would violate N.J.A.C. 16:41C-8.1(d)(3), which

requires a minimum distance of 1,000 feet between permitted locations. CCO's sign would be too close to an existing sign permit (#76080), which had recently been granted to Lamar Advertising of Penn, LLC ("Lamar") on January 2, 2017 ("Lamar's sign" or "sign #2").

Prior to issuing this final agency decision, I have reviewed and considered the Initial Decision of the Administrative Law Judge (ALJ), the letter of exceptions to the Initial Decision filed by the NJDOT in this matter, as well as the reply to exceptions filed on behalf of CCO. Based upon a de novo review of the record presented, I hereby reject the ALJ's finding and conclusion that the CCO sign had been erected from the appropriate point of reference consistent with its application. Accordingly, I agree that the NJDOT properly issued the 2016 notice of violation to CCO because CCO was maintaining sign #1 without a valid permit as required by N.J.A.C. 16:41C-6.1(a). However, I find that the NJDOT's denial of CCO's 2017 application in the built location was arbitrary, capricious and unreasonable because: 1) CCO's sign was originally permitted (#60354) six years before Lamar's sign was permitted (#66142); 2) Lamar's 2017 permit (#76080) should never have been issued by NJDOT because sign #2 was within 1,000 feet of sign #1 (#60354), which was subject to an administrative appeal at the time; and 3) the 986 foot separation (as measured by NJDOT) between the two signs as built is de minimus.

FINDINGS OF FACT:

I find the following facts based on the record presented below in this matter.

In May 1993 Elray Corporation ("Elray") applied to the NJDOT for a permit to erect an outdoor advertising sign along Route 440, 100 feet east of Parker Street. The application was assigned permit # 60354, and was approved in June 1993. In 1999, Carole Media, Inc. ("Carole Media") applied to the NJDOT for a nearby permit to erect an outdoor advertising sign along Route 440, 10 feet north of State Street. That application was assigned permit #66142, and was approved in November 1999.

In 2002, CCO took ownership of Sign #1 and applied to NJDOT to transfer the associated permit (#60354) from Elray to itself, which was approved. Similarly, in 2006, Lamar came to own Sign #2 and hold the associated permit (#66142).

In 2016, after conducting a compliance inspection of Route 440, the NJDOT discovered for the first time that both CCO's 1993 sign (#60354) and Lamar's 1999 sign (#66142) were not built in their approved permit locations and were also located within 1,000 feet of each other in violation of N.J.A.C. 16:41C-8.1(d)(3). On September 29, 2016, NJDOT issued a "location report of violation" to Lamar notifying it of the violations. The record does not show that any similar corresponding notice was sent to CCO. On October 11, 2016, the NJDOT issued nearly identical notices of violation to CCO and Lamar indicating that the signs violated N.J.A.C. 16:41C-6.1a(a) because they were not erected pursuant to a valid permit and N.J.A.C. 16:41C-8.1(d)(3) because the signs were within 1,000 feet of the permitted location of another sign. Significantly, the notices advised CCO and Lamar that a corrective permit could not be issued.

On November 7, 2016, CCO requested an informal hearing. On November 10, 2016, Lamar requested an informal hearing. On that same date, Lamar applied for a corrective permit to authorize sign #2 in its current location despite NJDOT's statement that a corrective permit could not be issued. Lamar's informal hearing was conducted on December 7, 2016 and CCO's informal hearing was conducted on December 22, 2016. On January 2, 2017, the NJDOT approved Lamar's corrective application, which was assigned permit # 76080. Subsequently on January 18, 2017, CCO applied for a corrective permit. In denying CCO's 2017 application, the NJDOT stated that CCO's permit could not be approved because CCO's sign would be less than 1,000 feet from Lamar's newly approved permit (#76080). The NJDOT maintained that the signs were 986 feet apart, fourteen feet short of the 1,000-foot distance required under the regulations.

The NJDOT then issued a decision on CCO's informal hearing, affirming that sign #1 was not built in the approved location as depicted in its 1993 permit (#60354), and thereby violated the Advertising Rules. CCO's request for a formal hearing followed on April 17, 2017 and the matter was transferred to the Office of Administrative Law on May 3, 2017.

A hearing was held before the OAL on June 11, 2024 and June 12, 2024. The ALJ issued her initial decision on November 24, 2024 finding that the NJDOT had not met its burden of proof to demonstrate that CCO's sign was maintained in violation of the Outdoor Advertising Act and implementing regulations for displaying a sign without an outdoor

advertising permit and for being within 1,000 feet of a permitted location.

2016 Violation

The Outdoor Advertising Rules require that each application for an outdoor advertising permit specify the location where the sign is to be erected and maintained. N.J.A.C. 16:41C-6.2(c). A proper application "shall depict graphically the location of the proposed sign by showing its distance from the nearest intersecting road . . . or other permanent point of reference. The measurement shall be made along the nearest edge of the highway pavement from the closest permanent place of identification, such as an intersecting road . . . ". Ibid. Also, a sign that is built at a location other than that specified in an approved application, shall be deemed unauthorized by permit. Ibid.

Moreover, the 1993 Advertising Rules, formerly at N.J.A.C. 16:41C-5.3(b) ("former rules"), similarly required the applicant to "specify the location where the sign is to be placed and maintained." 24 N.J.R. 1816 (May 4, 1992). The former rules also distinguished between the "sign", which was the advertising display itself, and the structure on which the display was placed, both of which had to be depicted on the application. N.J.A.C. 16:41C-1.1; N.J.A.C. 16:41C-5.3(c).

With regard to the appropriate points of reference to measure the sign, I find the NJDOT's argument that the near side of Parker Street is the appropriate point of reference is more compelling and is consistent with a common sense reading of the regulation. When measuring the distance between two objects, common sense dictates the nearest side

of the object be used as a point of reference. While I appreciate CCO's argument that the far side of Parker Street was appropriate since there was no curb or other permanent point of reference on the near side, the regulation does not require that the permanent point of reference be a curb. The edge of the pavement is sufficient.

Regarding whether the supporting structure or the sign itself is the other appropriate point of reference from which to take the measurement, I agree with the NJDOT that the plain language of the regulation indicates that it is the sign itself and not the supporting structure or pole that should be used as the point of reference. Moreover, the NJDOT's distinction between the two in the definitions section demonstrates it was aware of the difference and made a conscious decision to choose the sign itself rather than the supporting structure in the language of the regulation.

Accordingly, because the advertising sign itself was not located 100 feet from the near side of Parker Street, as depicted in the original 1993 application, I find that CCO sign was not authorized by permit, and the NJDOT properly issued a violation to CCO for erecting and maintaining a sign without a permit in violation of N.J.A.C. 16:41C-6.1(a).

2017 Denial of CCO's Corrected Application:

Regarding CCO's corrective application, I find that under the totality of the circumstances, the NJDOT's decision to approve Lamar's corrective application, but deny CCO's corrective application was arbitrary, capricious and unreasonable. First, CCO's sign was permitted

(#60354) six years before Lamar's sign was permitted (#66142). Indeed, all parties, including the NJDOT, permitted the existence of both signs in their current built locations for twenty-three years (sign #1) and seventeen years (sign #2) before making the determination in 2016 that they were not built in their approved applications. NJDOT's contention that Lamar filed its corrective application some two months before CCO is not compelling in light of the fact that CCO's permit existed six years before Lamar's permit. Moreover, the timing of the corrective applications should not have been a determinative factor here since the NJDOT clearly advised both parties that corrective permits could not be issued.

Moreover, it was unreasonable for the NJDOT to grant Lamar's 2017 corrective permit (#76080) since it was located within 1,000 feet of CCO's current built location, which was still the subject of an ongoing protest. Indeed, on January 2, 2017 when the NJDOT granted Lamar's corrective permit, an informal decision had not yet been rendered in either CCO or Lamar's informal hearings. Moreover, the NJDOT was aware that even if CCO did not prevail at the informal hearing, it still had a further right to request a formal hearing before the OAL. Thus, the NJDOT's decision to approve Lamar's 2017 corrective permit (#376080) while CCO's administrative proceedings were pending was unreasonable.

Lastly, I agree with the ALJ's conclusion that the 986 feet of separation between the two signs instead of 1,000 feet is de minimis. This is only fourteen feet short of the 1,000 foot distance required under N.J.A.C. 16:41C-8.1(d)(3). This finding does not undermine the safety or importance of the NJDOT's outdoor advertising regulations,

which are critical at preventing adverse public safety impacts and ensuring the safety and beauty of New Jersey's roadways.

This slight distance differential coupled with CCO's longstanding permit approval at the built location and the fact that the NJDOT already granted Lamar's corrective permit (#76080) some eight years ago militate toward the equitable determination that both Lamar and CCO be permitted to maintain their signs in the current built locations.

It is, therefore, on this 21st day of February 2025, ORDERED that the NJDOT's denial of petitioner's 2017 permit application is DENIED, and the NJDOT shall issue an outdoor advertising permit to petitioners to maintain sign #1 in its current built location.

This FINAL AGENCY DECISION may be appealed in accordance with Rule 2:4-1(b) by filing a Notice of Appeal with the New Jersey Superior Court, Appellate Division, within 45 days from the date of service or **notice of this decision.**

**STATE OF NEW JERSEY
DEPARTMENT OF TRANSPORTATION**

Francis K. O'Connor
**Francis K. O'Connor
Commissioner, New Jersey
Department of Transportation**

DATED: February 21, 2025