



North Carolina Outdoor Advertising Association

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TJ Bugbee  
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October 8, 2020

North Carolina Rules Review Commission  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609

Public Comments Regarding 2020 Proposed Revisions to Rules Governing Outdoor Advertising

Commissioners and Staff,

On behalf of the North Carolina Outdoor Advertising Association (NCOAA) and its members, thank you for the opportunity to respond to the proposed readoption of rules for the control of outdoor advertising in North Carolina. Attached please see my original letter to the North Carolina Department of Transportation (NCDOT), submitted during the public comment phase of the rules review process.

NCOAA has determined that several of these rules as adopted fall into one or more of the following categories: 1) are unclear and ambiguous; 2) contradict the legislative intent of S.L. 2013-413; 3) lack the statutory authority for implementation; and 4) and are "not valid", as they were not "adopted in substantial compliance with this Article" as required by G.S. 150B-18.

Craig Justus, (Van Winkle Law Firm) has also submitted written comments that further expand on these determinations, and I encourage each of you to thoroughly review his comments. I will however touch on a few that stand out.

The intent of the Regulatory Reform Act of 2013 (S.L. 2013-413) is clearly stated in the short title of the Session Law, "AN ACT TO IMPROVE AND STREAMLINE THE REGULATORY PROCESS IN ORDER TO STIMULATE JOB CREATION, TO ELIMINATE UNNECESSARY REGULATION...". Several of the proposed rules identified in the written comments submitted by Mr. Justus, neither streamline the regulatory process, nor do they stimulate job creation. On the contrary, several of the rules identified are directly averse to the legislative intent, increasing the regulatory burden, and harming the outdoor advertising industry. Furthermore, several of the adopted rules are out

of compliance with the APA, specifically in regards to G.S. 150B-19.1(2) which states: "An agency shall seek to reduce the burden upon those persons or entities who must comply with the rule."

Under the existing rules, the outdoor advertising industry in North Carolina has seen a steady decline in the overall number of outdoor advertising structures for more than a decade. The proposed rules identified in Mr. Justus' written comments, if approved, will contribute to and expedite this decline, and further harm the industry.

In particular, the proposed changes to the definition of "sign location" from 1/100<sup>th</sup> of a mile, to a GPS coordinate, will eliminate a mechanism by which sign owners are able to move a sign off of a new right-of-way established by a road widening, within the bounds of the same "Sign Location/Site". Currently, a sign may be moved within the same "Sign location/site" (26 feet either side of the pole:1/100 mile) as defined in NCDOT's current regulations, and affirmed by the N.C. Supreme Court in *Lamar v. Stanly County*. The effect of this proposed change would overturn *Lamar v. Stanly County*, leading to further unnecessary, and extensive just compensation disputes over the forced taking of a sign.

If the Department's desire is to have a GPS location for its internal use, an alternative solution to changing the definition of sign/site location, would be to require permit holders to provide a GPS coordinate for reference, as part of each permit renewal.

The practical effect of many of these rules as proposed, will increase the rate of the forced taking of signs. NCDOT has been aware of similar objections by NCOAA since March 15<sup>th</sup>, 2019. We respectfully request that the Rules Review Commission reject the rules as identified in Mr. Justus' letter.

Sincerely,



TJ Bugbee  
Executive Director  
North Carolina Outdoor Advertising Association

Cc: Jeannine Dodson, President NCOAA  
Amber May, Commission Counsel, RRC  
Craig Justus, Esq., Van Winkle Law Firm



North Carolina Outdoor Advertising Association

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February 17, 2020

North Carolina Department of Transportation  
c/o Helen Landi  
NCDOT APA Coordinator  
1501 Mail Service Center  
Raleigh, NC 27699-1501

Public Comments Regarding 2020 Proposed Revisions to Rules Governing Outdoor Advertising

Mrs. Landi,

On behalf of the North Carolina Outdoor Advertising Association (NCOAA) and its members, thank you for the opportunity to respond to the proposed readoption of rules for the control of outdoor advertising in North Carolina, as required under G.S. 150B-21.3A, and submitted to the North Carolina Register on January 2<sup>nd</sup>, 2020. NCOAA's membership collectively represents more than 90% of the outdoor advertising industry in North Carolina. I write to you today on behalf of the industry, to raise practical, justifiable concerns as related to the amended rules, currently proposed by the North Carolina Department of Transportation (NCDOT).

The outdoor advertising industry in North Carolina has seen a steady decline in the overall number of outdoor advertising structures over the past ten years. The proposed rules identified in the written comments submitted by NCOAA counsel Craig Justus (Van Winkle Law Firm), entitled "Proposed DOT Rulemaking (2020) – Public Comment" outline a number of objections to the rules currently being proposed that will contribute to, and expedite this decline.

The rules as proposed are far from a simple readoption, and the newly proposed changes will result in an overall negative impact on our State, reaching well beyond businesses directly operating outdoor advertising structures. The unintended consequences of some of the proposed changes will also negatively impact other North Carolina businesses, landowners, and taxpayers.



The business of outdoor advertising is inherently local, with local businesses accounting from 70%, to upwards of 90% of the advertisers in some markets. As a tourism destination, North Carolina is also host to an abundance of out-of-state visitors, and many businesses rely on this medium to reach a very specific audience: the nearby travelling public. Local businesses depend on this medium to drive traffic off of the highways, and into our towns, or to their websites, on a day-to-day basis. Local nonprofits, civic groups, and government entities utilize the medium to keep residents informed. Sign owners employ people locally, pay local property tax on their signs, and provide regular income to local landowners through the lease of their property. In addition, numerous businesses and individuals not primarily involved in the operation of outdoor advertising structures, own one, or multiple off-premise signs, for the sole purpose of advertising their primary business, or simply providing additional income to their family.

In 2013, the North Carolina General Assembly (NCGA) required North Carolina's Departments and Agencies to periodically review their existing rules. The intent of the Regulatory Reform Act of 2013 (S.L. 2013-413) is clearly stated in the short title of the Session Law, "AN ACT TO IMPROVE AND STREAMLINE THE REGULATORY PROCESS IN ORDER TO STIMULATE JOB CREATION, TO ELIMINATE UNNECESSARY REGULATION...". The proposed rules identified in the written comments submitted by NCOAA counsel, neither streamline the regulatory process, nor do they stimulate job creation. On the contrary, the rules identified are directly adverse to the legislative intent of the General Assembly in requiring the periodic review of existing rules.

In particular, the proposed changes to the definition of "sign location" from 1/100<sup>th</sup> of a mile, to a GPS coordinate, will eliminate a mechanism by which sign owners are able to move a sign off of the new right-of-way established by a road widening, within the bounds of the same "Sign Location/Site". Currently, a sign may be moved within the same "Sign location/site" (26 feet either side of the pole:1/100 mile) as currently defined in NCDOT's regulations, and affirmed by the N.C. Supreme Court in *Lamar v. Stanly County*. The effect of this proposed change would overturn *Lamar v. Stanly County*, leading to further unnecessary, and extensive just compensation disputes over the taking of a sign.

In addition, the establishment of a new "alteration permit", runs counter to the legislative intent of the modernization statute (G.S. 136-131.2), and would place additional, unnecessary red tape on sign owners. The practical effect of this proposal would also place additional workload on NCDOT. Requiring an entirely new permit to make even minor modifications to an established structure, only adds another regulatory hurdle that has not been, and is not necessary, for NCDOT's adequate control of outdoor advertising.

The practical effect of many of these rules as proposed, will increase the rate of the forced taking of signs. NCDOT has been aware of similar objections since March 15<sup>th</sup>, 2019, when NCOAA responded in good faith to a different set of draft rules, courteously provided to NCOAA by NCDOT, prior to a one-year extension granted to NCDOT by the Rules Review Commission. The rules as identified by NCOAA counsel will further contribute to that decline, and thus, increase the regulatory burden on the outdoor advertising industry, the workload on NCDOT, and the cost to North Carolina taxpayers.

To adhere to the intent set forth by the General Assembly in S.L. 2013-413, NCDOT should instead be proposing rules that reduce NCDOT's workload, by allowing NCDOT to focus its efforts on signs that do not meet current State or Federal regulations, and bad actors in the industry that do not adhere to those standards.

It is our sincere hope that NCDOT will take the concerns we have addressed into account. NCOAA and its members respectfully request that NCDOT amend its proposed rules to account for the concerns identified by NCOAA counsel and myself, and refrain from implementing these new, burdensome regulations, that will ultimately harm landowners, businesses, the travelling public, and the taxpayers of North Carolina. NCOAA stands ready, and looks forward to working with NCDOT ahead of its August 31<sup>st</sup>, 2020 readoption deadline, to preserve NCDOT's sufficient control of outdoor advertising, and equitably streamline regulatory burdens facing the outdoor advertising industry.

Sincerely,

A handwritten signature in black ink, appearing to read 'TJ Bugbee', with a large, sweeping loop at the end.

TJ Bugbee  
Executive Director  
North Carolina Outdoor Advertising Association

Cc: Jeannine Dodson, President NCOAA  
Ebony Pittman, Esq., NCDOT  
Craig Justus, Esq., Van Winkle Law Firm