



Philadelphia's Public Spaces: For Sale by Owner?

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The Legal Intelligencer

January 28, 2013

Over the past six months, Philadelphia City Council has proposed a myriad of bills that would place advertisements in our public spaces, e.g. on school buses, on newsstands, entire sides of buildings facing historic districts, on municipal property citywide, even legalizing the small posters plaguing our neighborhoods ("We buy ugly houses!"). Several of the proposed bills relate to digital signage (electronically changing digital message boards utilizing LED technology). Not all the bills have passed, some have quietly slipped onto a back burner, but a trend is emerging. Our lawmakers are seeking to create specific legislation to circumvent the zoning code and allow outdoor advertising to be placed in our public spaces, oftentimes in exchange for specific revenues.

The outdoor advertising industry has thrived while other forms of traditional advertising (newspapers, magazines, etc.) have declined. It remains the one form of advertising that cannot be tuned out or turned off. The industry seeks to place large, changing ads in unexpected places, making them that much more effective. Outdoor advertisers in recent years have developed strategies and made inroads in partnering with cash-strapped municipalities across the globe.

City Council to Allow Huge Wall Wrap?

A recent foray into a revenue partnership is Bill 120920. The bill addresses an area bounded by 7th Street, Spring Garden Street, 6th Street and Willow Street. If it becomes law, it will permit up to a 10,000-square-foot digital wall wrap to be installed just north of Independence National Historic Park. Philadelphia Mayor Michael Nutter vetoed the bill January 24. City Council has until Thursday to vote to override his strongly worded veto.

The largest property impacted by the bill has been the subject of litigation since 1999 when the owner illegally erected a seven-story wall wrap, a size not permitted at this specially protected location (Vine Street Parkway area). In the most recent litigation, *Callowhill Center Associates v. Zoning Board of Adjustment*, 2 A.3d 802 (Pa Commw. Ct , 2010), the Commonwealth Court affirmed the trial court's holding that the Zoning Board of Adjustment correctly denied a variance, citing, among other holdings, res judicata. The owner of the property then pursued a new tack and has twice sought legislative change from City Council. Bill 120920 permits a digital installation impacting the view from the historic districts and the Reading Viaduct. While it appears to be an example of highly disfavored spot zoning, it has gained support partially because of provisions in the bill that incorporate a community benefits agreement. In the agreement, Callowhill Center Associates agrees that a percentage of net revenues generated by the digital wall wrap will be funneled into a newly established charitable foundation, which will then contribute to several nearby home and school associations. Concerned parents worried about the funding of their children's education thus become pawns in the outdoor advertisers' efforts to buy the public's eyes.

Applicable State and Federal Laws

The Federal Highway Beautification Act, 23 U.S.C. Section 131, et seq. (HBA), promulgated in response to the efforts of Lady Bird Johnson, governs the areas directly adjacent to the federal highways. Regulations include billboard size and distancing requirements, requirements as to placement within or near residential districts, and other limitations including when an older, nonconforming sign must be removed. The regulatory system to effectuate the HBA consists of federal/state agreements whereby the state agrees to regulate pursuant to the HBA. The state then signs similar agreements with certain municipalities. Many of the bills proposed by City Council, including Bill 120920, have involved billboards, digital and otherwise, which are near or adjacent to federal-aid highways. The Pennsylvania Department of Transportation and the Federal Highway Administration have written letters on the subject of Bill 120920. The bill involves an area within 660 feet of the Vine Street right-of-way (a controlled highway for purposes of HBA), and violates federal law for several reasons, most obviously because of size. The penalties for noncompliance with federal law could be up to a 10 percent reduction of federal highway funding to PennDOT. PennDOT would allocate that loss to Philadelphia projects. Prior to Nutter's veto, City Council appeared ready to take the risk.

Safety and Sustainability

Digital signs are brighter, visible from greater distances and generally display constantly changing advertisements. They consist of lights built into sign cabinets that can hold over 10,000 diodes each, each using two to 10 watts of energy, depending on the time of day, brightness level and the frequency of the message change. Digital signs generally remain lit at all times. As a result of their structure and their uses, they consume significantly more energy than a standard sign, up to 29 times more, according to some research.

Digital signs are designed to retain the driver's attention over an extended period of time. In a 2006 study for the National Highway Traffic Safety Administration, researchers at Virginia Tech found that a driver's risk of crashing greatly increases when a distraction takes his or her eyes off the road for over two seconds. Furthermore, the study determined that 80 percent of all crashes involved driver inattention just prior to (within three seconds) of the crash. A new study was conducted by the Swedish National Road and Transport Research Institute and presented during the annual meeting of the Transportation Research Board on January 16. The researchers determined that drivers looked at digital billboards significantly longer than at other signs along the same route. Combined with other research, it is clear that digital billboards attract and hold the gazes of drivers far longer than is safe. With respect to signage, our policymakers should seek to lessen distractions as well as energy consumption, not cause them to be increased.

Philadelphia's viewsapes are among our city's most precious assets. Drivers and pedestrians must be as safe as possible on our streets. Nutter aspires to have Philadelphia be "America's greenest city." The long-term, comprehensive plans prepared by his administration also value sustainability and safety. The impact of billboards on the beauty, safety and sustainability of the city should concern all Philadelphians. With respect to Bill 120920, Nutter wrote, "Permission for large-scale signs should not be granted on a one-off basis, but should be considered on a citywide basis, as part of a larger planning process, with broader development goals in mind." We must work together to ensure that technological advances and difficult economic times do not trump the protection of our public spaces, our drivers, our pedestrians and the delicate historic fabric of our city.

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