



Pennsylvania High Court Strikes Down Restrictions on Billboards...Sort Of

Township of Exeter v. ZHB of Exeter Township and Land Displays, Inc.

Pennsylvania Supreme Court, January 22, 2009

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The Pennsylvania Supreme Court held that a township's restriction of off-site advertising signs to a maximum of 25 square feet was a *de facto* exclusion of billboards within the township. However, the Court specifically noted that its decision does not guarantee that a township must permit billboards that are of a size to fit industry standards.

On January 22, 2009, in *Township of Exeter v. ZHB of Exeter Township and Land Displays, Inc.*, the Pennsylvania Supreme Court held that Exeter Township's zoning ordinance constituted a *de facto* exclusion of billboards. However, the Court took care to make clear that, despite the ruling of the Exeter Township Zoning Hearing Board, townships were not necessarily required to permit billboards of a size that comported to industry standards.

In the case, Land Displays, Inc. challenged the constitutionality of the township's zoning ordinance, which limited off-site advertising signs to a maximum of 25 square feet. Land Displays contended that, while facially allowing off-site advertising, the township's ordinance effectively amounted to a *de facto* exclusion of billboards. In support of its contention, Land Displays offered testimony before the zoning hearing board that the industry standard sizes for billboards was either 300 or 672 square feet, and that advertisers could not effectively reach motorists along highways with signs only 25 square feet in size. The township countered with pictures of existing signs that met the ordinance's limitations and took the position that, because conforming signs existed, the ordinance could not possibly be exclusionary.

The Zoning Hearing Board agreed with Land Displays and found that the ordinance provision constituted a *de facto* exclusion of billboards. The Zoning Hearing Board further issued site-specific relief to the applicant for signs up to 300 square feet, except it found that no billboards were appropriate along a limited stretch of Route 422. The Board further recommended that the township amend its ordinance to permit billboards with reasonable restrictions along certain sections of Route 422. On appeal, the Commonwealth Court reversed the decision, finding that there was no legal requirement that industry standards be accommodated in a zoning ordinance, and finding that the existence of conforming signs prevented a finding of exclusion.

On appeal to the Supreme Court, the Supreme Court reversed the Commonwealth Court, finding that there was adequate proof in the record to support the contention that the zoning ordinance effectively banned billboard-type advertising in the township.

In analyzing the case, the Court employed a two-part test on the constitutionality of the exclusionary ordinance: First, whether the applicant proved that the ordinance did, in fact, exclude billboard advertising and, second, whether the ordinance is salvaged by evidence that the exclusion bears a substantial relationship to the public health, safety or welfare. The Court found that the evidence below established that the ordinance did exclude billboard-style advertising. The Court

further found that the industry standard size for billboards was not necessarily controlling in determining what maximum advertising sign size would be exclusionary. The case was remanded to the Commonwealth Court to determine whether the zoning hearing board erred in finding that aesthetic and safety concerns justified restricting billboards only on a portion of Route 422, instead of along the entire highway within the township.

The Supreme Court's decision in *Township of Exeter* is a mixed blessing to outdoor advertisers. No longer can a municipality claim that it permits outdoor advertising by placing overly-restrictive size limitations on signs. However, the decision does not guarantee that outdoor advertisers will be able to provide standard-sized billboards. Indeed, the Court specifically noted that it did "not approve the Board's embrace of the...industry size standard for billboards," but that issue was not before the Court. The door remains open to an ongoing struggle over what constitutes "just enough" when it comes to limiting the size of outdoor advertising.

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