

Bond Case Briefs

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ZONING & PLANNING - NORTH CAROLINA

Visible Properties, LLC v. Village of Clemmons

Court of Appeals of North Carolina - August 2, 2022 - S.E.2d - 2022-NCCOA-529 - 2022 WL 3031723

Outdoor advertising sign company petitioned for writ of certiorari after city zoning board of adjustment rejected company's application for zoning permit to construct billboard with digital technology on property bordering city highway.

The Superior Court granted petition and affirmed board's decision. Company appealed.

The Court of Appeals held that:

- City zoning ordinances allowed construction of company's proposed sign;
- Company's proposed sign, which periodically changed static digital images, was not "moving and flashing sign" prohibited by city zoning ordinances; and
- Company's proposed sign was not "electronic message board" prohibited by city zoning ordinances.

Provisions for off-premises signs contained in sign regulations portion of city zoning ordinances, which allowed off-premises signs on property near city highway, superseded two other more general ordinances governing property, which did not allow off-premises signs, and thus city zoning ordinances allowed outdoor advertising sign company to construct proposed billboard with digital technology on property; sign-specific rules directly applied to use at issue, and sign-specific rules stated that other zoning restrictions did not apply if proposed use was regulated by specific regulations of that section.

Outdoor advertising sign company's proposed digital billboard, which periodically changed static images, was not "moving and flashing sign" within meaning of city zoning ordinance prohibiting moving and flashing signs near city highway; ordinary usage of ambiguous terms "moving" and "flashing" did not squarely describe digital billboard, which was not capable of movement and had no sudden or transient display of lights, excluding billboards that changed static images did not render superfluous ordinance's exclusion of electronic time, temperature, and message signs, and specific examples of prohibited signs, including pennants, banners, and spotlights, were capable of either physically moving or shining light in sudden or intermittent manner.

Outdoor advertising sign company's proposed digital billboard, which periodically changed static images, was not "electronic message board" within meaning of city zoning ordinance prohibiting electronic message boards near city highway; reading ordinances to prohibit any electronic sign displaying any form of message would render "electronic message board" term superfluous, ordinary meaning of ambiguous term electronic message board referred to narrower category of sign, such as mobile electronic signs seen near road construction, or digital message boards often affixed beneath business's name or logo and listing business hours or product offerings, which would not be described as billboards like company's proposed sign.

