



VIKKI GOODWIN



STATE REPRESENTATIVE • DISTRICT 47

[sent via e-mail]

July 27, 2020

J. Bruce Bugg, Jr., Chair
Texas Transportation Commission
Texas Department of Transportation
125 E 11th Street
Austin, TX 78701

Dear Mr. Bugg:

Last December I held a town hall in Spicewood. There several constituents, as well as the group Scenic Texas, raised concerns about billboards that are visible from, and sometimes located inside, cemeteries used by the public. (TxDOT's commercial sign director, Wendy Knox, was in attendance at that meeting.) Hill Country Texans who regularly drive by and visit Spicewood's Fall Creek Cemetery had complaints about that site in particular.

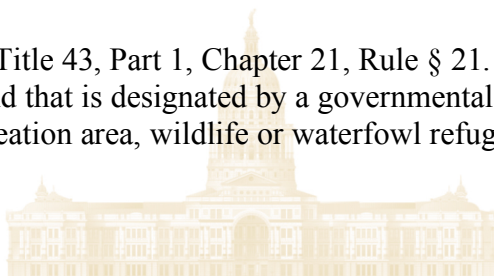
The Texas Highway Beautification Act is a legacy of our own Lady Bird and President Johnson. Thus Texans have a special interest in honoring the couple's intention to limit billboards to commercial zones and areas used for travel-related commercial purposes. Unfortunately, TxDOT rules that allow billboards in cemeteries like Fall Creek clearly subvert that aim.

Along with the other Central Texas House members signed below, I would like to direct your attention to two specific rules: 21.142 and 21.179. We are recommending changes to each of these in order to preserve cemeteries and similar areas as spaces for serenity and reflection. We ask that you include these suggested changes to the commercial sign rule changes that are currently being considered by the Commission for Chapter 391 (federal highways) of the Transportation Code. We also ask that you duplicate these rule change recommendations in the TxDOT rules controlling Chapter 394 (Texas Rural Roads).

Rule 21.142 (public space)

Current Rule

Texas Administrative Code, Title 43, Part 1, Chapter 21, Rule § 21.142 (24) defines a public space as “publicly-owned land that is designated by a governmental entity as a park, forest, playground, scenic area, recreation area, wildlife or waterfowl refuge, historic site, or similar public space.”



Problem

In defining public space strictly as public land, it allows commercial signs (billboards) to be erected or maintained on private lands that are clearly fulfilling a public purpose. Moreover, the list of sites used as public spaces does not include cemeteries, which are often, if not usually, open to the public for commemorative purposes. There are many privately-owned properties that are developed for use by the public as parks, playgrounds, scenic or historic areas or, in this case, cemeteries. Fall Creek Cemetery is privately owned but has been developed as a cemetery to be used by the public. (See attached photos.)

Proposed Rule Change

Redefine “public space” as “publicly-owned land that is designated by a governmental entity as a park, forest, playground, scenic area, recreation area, wildlife or waterfowl refuge, historic site, cemetery or similar public space, or privately-owned land that is identified or used by the public as a park, forest, playground, scenic area, recreation area, wildlife or waterfowl refuge, historic site, cemetery or similar public space. [Add similar rule change to Rural Road Act rules.]

Rule 21.179 (unzoned commercial or industrial area)

Current Rule

Texas Administrative Code, Title 43, Part 1, Chapter 21, § 21.166 allows for commercial sign permits to be issued in, among other places, an “unzoned commercial or industrial area.” Rule §21.179 of the same chapter defines such an area as one that meets the following criteria:

- (a) An unzoned commercial or industrial area is one that
 - (1) is within 800 feet, measured from the nearest point along the edge of the highway right of way perpendicular to the centerline of the main-traveled way, of and on the same side of the highway as the principal part of at least two adjacent recognized governmental, commercial, or industrial activities that meet the requirements of subsection (c) of this section;
 - (2) is not predominantly used for residential purposes; and
 - (3) has not been zoned under authority of law.

- (b) A part of the regularly used buildings, parking lots, or storage or processing areas of each of the governmental, commercial, or industrial activities must be within 200 feet of the highway right of way and a portion of the permanent building in which the activity is conducted must be visible from the main-traveled way.

- (c) For governmental, commercial, or industrial activities to be considered adjacent for the purposes of subsection (a)(1) of this section, the regularly used buildings, parking lots, storage or processing areas of the activities may not be separated by:
 - (1) a public road, or a street; or
 - (2) more than 50 feet of:
 - (A) vacant lot;
 - (B) undeveloped area; or
 - (C) a non-governmental, non-commercial, or non-industrial area.

- (d) Two activities that occupy the same building qualify as adjacent activities for the purposes of subsection (a)(1) of this section, if:
- (1) each activity:
 - (A) has at least 400 square feet of floor space dedicated to that activity; and
 - (B) is an activity that is customarily allowed only in a zoned commercial or industrial area;
 - (2) the two activities are separated by a dividing wall constructed from floor to ceiling;
 - (3) the two activities have access to the restroom facilities during all hours the activity is staffed or opened; and
 - (4) the two activities operate independently of one another.

Problem

The provisions articulated in subparagraph (d) can allow one building containing two commercial activities to constitute a commercial activity area. This definition allows, in turn, for the erection of multiple billboards in an area that would not conventionally be understood as a commercial one. This is not in keeping with the intent of protecting highway beauty and is not in the public's interest.

Proposed Rule Change

Redefine "unzoned commercial or industrial area" to require the commercial activities to be housed in two separate buildings as shown in a new subparagraph (d), suggested below, that would take the place of the current one.

(d) Two activities may not occupy the same building to qualify as adjacent activities for the purposes of subsection (a)(1) of this section. [Add similar rule change to Rural Road Act rules.]

We respectfully request that TxDOT amend the two rules described above in its rules implementing Transportation Code Chapter 391 and Chapter 394. Please feel free to contact Representative Goodwin should you have any questions. We thank you for your consideration of this important issue.

Sincerely,



Vikki Goodwin



Donna Howard
State Representative, District 48



Celia Israel
State Representative, District 50



Sheryl Cole
State Representative, District 46



Erin Zwiener
State Representative, District 45

cc: Alvin New, Commissioner
Laura Ryan, Commissioner
Robert C. Vaughn, Commissioner
Executive Director James Bass
Ron Johnson, General Counsel Office
Kyle Madsen, Director ROW
Wendy Knox, Director Commercial Signs Regulation
Sarah Tober, Scenic Texas

Attachments: photo of billboard in Fall Creek Cemetery
photo of “unzoned commercial or industrial area” adjacent to the cemetery, which
contains two businesses in one building



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Rum

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MAUCK
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APRIL 8, 2007

ROBERT ARVINE
MAUCK
LARRY TEXAS
NOV. 10, 1938
APRIL 11, 2015
MAY 5, 2017





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TEXAS TRANSPORTATION COMMISSION

July 29, 2020

J. Bruce Bugg, Jr.
Chairman

The Honorable Vikki Goodwin
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Laura Ryan
Commissioner

Alvin New
Commissioner

Robert C. Vaughn
Commissioner

Dear Representative Goodwin,

I have received your letter dated July 27, 2020 regarding a billboard located near Spicewood's Fall Creek Cemetery. In this letter, you also suggested two proposed rule changes to TxDOT's current billboard rules.

I have reviewed the information you provided and asked James Bass, TxDOT Executive Director, to look into this matter.

Maintaining strong partnerships and open lines of communication is crucial in achieving our shared goal of providing responsible transportation solutions for all Texans. I look forward to learning more about this issue and hope you will continue to reach out when I may be of service.

Thank you again for bringing this matter to my attention. If you have any questions, you may contact me at (512) 305-9509 or your staff may contact Katelyn Dwyer in my office at (512) 305-9519.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Bruce Bugg, Jr.", with a large checkmark-like flourish extending from the end.

J. Bruce Bugg, Jr.
Chairman
Texas Transportation Commission

cc: Texas Transportation Commission
James M. Bass, Executive Director, TxDOT
Kyle Madsen, Director, Right of Way Division, TxDOT
Trent Thomas, Director, State Legislative Affairs
Wendy Knox, Director, Commercial Signs Regulation, TxDOT
Ron Johnson, Attorney, TxDOT
Sarah Tober, Scenic Texas



125 EAST 11TH STREET, AUSTIN, TEXAS 78701-2483 | 512.463.8588 | WWW.TXDOT.GOV

September 3, 2020

The Honorable Vikki Goodwin
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768

The Honorable Donna Howard
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768

The Honorable Celia Israel
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768

The Honorable Sheryl Cole
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768

The Honorable Erin Zwiener
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768

Dear Representatives:

I am responding to your letter dated July 27, 2020, regarding a billboard in Spicewood's Fall Creek Cemetery and requested rule changes to the Texas Department of Transportation's (TxDOT) Commercial Signs Regulatory Program. As requested by Texas Transportation Commission Chairman Bruce Bugg, TxDOT has reviewed your request for TxDOT to consider amendments to Sections 21.142 and 21.179, Chapter 21, Part 1, Title 43, Texas Administrative Code, to address the sign at issue.

TxDOT has reviewed the inventory of commercial signs subject to TxDOT's Commercial Signs Regulatory Program and can find no other instance of a commercial sign that has been permitted within a cemetery beside the above-referenced Spicewood's Fall Creek Cemetery sign. Commercial signs also require the property owner(s) to approve the construction of a commercial sign on private property. A review of Fall Creek Cemetery's organizational documents indicates that it is a nonprofit association of cemetery plot owners. Therefore, we believe a majority of the cemetery plot owners must have approved the commercial sign be built on the cemetery's private property.

While TxDOT appreciates the concerns raised in your letter, this appears to be an isolated incident in which a majority of the plot owners have agreed to allow the commercial sign to be located on the cemetery's private property. TxDOT does not believe that it is appropriate to enact changes to the Commercial Signs Regulatory Program's statewide rules affecting private property ownership rights to address this isolated matter. Furthermore, even if TxDOT enacted the rule changes proposed, such a change would not remove the commercial sign in question. Because under current laws and rules, the sign would be grandfathered as a non-conforming sign.

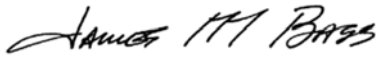
OUR VALUES: *People • Accountability • Trust • Honesty*

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Thank you for your engagement and suggestions on this issue, and we welcome further comments from you and your constituents in any future rulemaking processes. If you have any questions, please contact me at (512) 305-9515. If your staff needs additional information, they may contact Blake Calvert in our State Legislative Affairs Section at (512) 463-6399 or via email at Blake.Calvert@txdot.gov.

Sincerely,



James M. Bass
Executive Director

cc: J. Bruce Bugg, Jr., Chairman, Texas Transportation Commission
William L. Hale, P.E., Chief Engineer
Brian R. Barth, P.E., Director of Project Planning and Development
Kyle Madsen, J.D., Director, Right of Way Division
Trent W. Thomas, Director, State Legislative Affairs