

BEFORE THE IDAHO TRANSPORTATION DEPARTMENT

STATE OF IDAHO

SPARTAN PORTNEUF, LLC)	
Appellant,)	
)	Application No.11529
v.)	
)	
IDAHO TRANSPORTATION)	FINAL ORDER OF THE DIRECTOR
DEPARTMENT,)	
Respondent.)	
)	
_____)	

On October 25, 2018 an administrative hearing was held before the appointed Administrative Hearing Officer, Stephen Bywater, regarding the denial of an Outdoor Advertising Sign Application and Permit (ITD 1850). Appellant, Spartan Portneuf, LLC was represented by Thomas J. Katsilometes of Thomas J. Katsilometes, PLLC and Respondent, Idaho Transportation Department (hereafter, "ITD") was represented by J. Tim Thomas, Deputy Attorney General.

Application

Spartan Portneuf, LLC (hereinafter "Spartan") applied for a permit application on April 5, 2018. The Application requested a permit to install a monopole, directly illuminated, double faced sign, 14 feet by 48 feet and erected 20' off the ground level. The proposed sign was to be located on property owned by Spartan and set back 20 feet from Interstate Highway 15 near milepost 64 at the intersection of I-15 and Hildreth Road. On May 24, 2018, Justin Pond, ITD's Right of Way Program Manager issued a decision denying the application for two reasons; (1) the subject premises was not zoned properly and (2) there was no actual active commercial or industrial use on the premises. On June 26, 2018, Spartan filed an appeal which was heard before Hearing Officer Bywater on October 25, 2018.

The Hearing Officer issued a Findings of Fact, Conclusions of Law and Preliminary Order on February 25, 2019 affirming the Department's decision to deny the Outdoor Advertising Sign Application 11529 filed by Spartan. On March 11, 2019, Thomas J. Katsilometes, on behalf of Spartan filed a Motion for Review and Petition for Review of Preliminary Order.

As the Director of the Idaho Transportation Department, I have reviewed the relevant record of the proceedings before the Hearing Officer. In my review of the record and briefs, I find substantial evidence supports the findings of fact made by the Hearing Officer in the Preliminary Order. I do not find the findings of fact to be clearly erroneous or unsupported by the record in any respect. Accordingly, I adopt the findings of fact of the hearing officer contained in the Preliminary Order as my own and incorporate said findings of fact by reference in this Final Order.

In terms of the conclusions of law, I determine that this matter is resolved by the relevant provisions of Idaho Code sections 40-9011 and 40-1912. I adopt the hearing officer's interpretation of those code sections and concur that when interpreting a statute, the entire statute must be read and constructed as a whole. The language of a particular section should not be viewed in a vacuum but all sections of applicable statutes must be construed together so as to determine the legislature's intent and the interpretation of a statute begins with the literal words of the statute which must be given their plain, usual, and ordinary meaning.

Idaho Code section 40-1911 generally prohibits outdoor advertising signs within 660 feet from the edge of an interstate or state highway right-of-way. Idaho Code section 40-1911(3) provides a limited exception of one sign which advertises the activities of a business located on the property; provided the sign is within fifty feet of the business establishment. As noted by the hearing officer, Spartan failed to demonstrate that qualified business or commercial activities occurred on the property parcel in question. Idaho Code section 40-1911(4) also excepts signs

located within industrial, business or commercial areas zoned as such under state and local law or as determined by the Department. The facts presented in this matter show that the subject property is not within an industrial, business or commercial area and therefore the exception provided in Idaho Code 40-1911(4) also does not apply.

Spartan attempts to circumvent the statute in its interpretation of a related statute, Idaho Code section 40-1912. Idaho Code section 40-1912 provides:

- (1) The provisions of section 40-1911, Idaho Code, shall not apply to those segments of the interstate and primary system of highways which traverse and abut on commercial, business or industrial zones within the boundaries of incorporated cities, wherein the use of real property adjacent to and abutting on the interstate and primary system of highways is subject to city or county regulation or control, or which traverse and abut on other areas where the land use is clearly established by state law or county zoning regulation, as industrial, business or commercial, or which are located within areas adjacent to the interstate and primary system of highways which are in unzoned commercial or industrial areas as determined by the department from actual land uses. The department shall determine the size, lighting and spacing of signs in the zoned and unzoned industrial, business or commercial areas.

Idaho Code section 40-1912(1). I find the hearing officer's interpretation of the statute best effects the intent of generally prohibiting outdoor advertising next to interstates and state highways. First, the subject property is not within the boundaries of the City of Pocatello. Rather, the property is within the jurisdiction of Bannock County. Second, Bannock County has not zoned the area of the subject property as industrial, business, or commercial.

Despite this, Spartan argues its property satisfies the traversing and abutting exception contained in the statute because the City of Pocatello has zoned neighboring properties as commercial, business or industrial areas. However, the remaining language of the statute is clear on this point.

- (2) For the purpose of this chapter, areas abutting interstate and primary highways of this state which are zoned commercial or industrial by counties and cities shall be valid as commercial or industrial zones **only as to the portions actually used for commerce or industrial purposes** and the land along the highway in urban areas for a distance of six hundred (600) feet immediately abutting to the area of the use, **and does not include areas so zoned in anticipation of such uses at some uncertain future date**, nor does it include areas zoned for the primary purpose of allowing advertising structures. All signs located within an unzoned area shall become nonconforming if the commercial or industrial activity used in defining the area ceases for a continuous period of six (6) months.

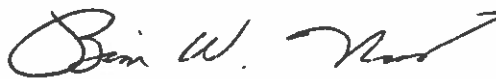
Idaho Code section 40-1912(2). The hearing officer concluded this section of the statute requires that there must be an active commercial or industrial use on the subject property to qualify for an outdoor advertising display permit from the Department. I concur. I find the hearing officer's conclusion of law is not clearly erroneous and, accordingly, should be upheld. This legal conclusion coupled with Spartan's failure to demonstrate any present business, commercial or industrial activity occurring on the subject property leads me to hold that Spartan does not qualify for an outdoor advertising display as a matter of statutory interpretation.

After a thorough review of the record and the relevant law, I further adopt and incorporate herein the conclusions of law and recommendations contained in Preliminary Order.

This Order is the final order and is the final administrative action of the Idaho Transportation Department.

Any party to the proceeding has the right to judicial review in the district court, pursuant to Idaho Code Section 67-5270. See Appendix "A".

Dated this 6 of May, 2019.



Brian W. Ness, Director
Idaho Transportation Department

CERTIFICATE OF SERVICE


I hereby certify that on this 7th day of May, 2019, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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Karen Woodhead
Legal Section

APPENDIX A

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by the Final Order or Orders previously issued in this case may appeal the Final Order and all previously issued Orders in this case to district court by filing a petition in the district court of the county in which:

- (a) A hearing was held,
- (b) The final agency action was taken,
- (c) The party seeking review of the Order resides, or
- (d) The real property of personal property that was the subject of the agency action is located.

See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the Order under appeal.