01-22-13

TENNESSEE DEPARTMENT OF TRANSPORTATION

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SECRETARY OF STATE

PETITION FOR DECLARATORY ORDER
SECOND AMENDED NOTICE OF HEARING

Pursuant to Tennessee Code Annotated § 4-5-224, Respondent, Tennessee Department of Transportation, gives the following notice of hearing on a petition for declaratory order:

1. Petitioner: Lamar Tennessee, LLC
   c/o Nancy King Crawford, Esq.
   Attorney at Law
   1929 21st Avenue South
   Nashville, Tennessee 37212

2. Summary of the relief requested:

   The Petitioner requests a declaratory order from the Tennessee Department of Transportation declaring that:

   (a) Petitioner's permit for its previous billboard, Permit No. 19-3285, is lawful and valid for its rebuilt billboard;

   (b) Petitioner's rebuilt billboard is lawful;

   (c) The Tennessee Department of Transportation's application of the applicable statutes and regulations is invalid:

   (d) The Tennessee Department of Transportation's failure to recognize the validity of Permit No. 19-3285, as it relates to the rebuilt billboard, is a *defacto* denial of the permit; and

   (e) The Tennessee Department of Transportation be prohibited from removing Petitioner's rebuilt billboard.

3. Statutes and Rules that the Tennessee Department of Transportation is called upon to interpret or upon which it is to rule:

   - Tenn. Code Ann. §54-21-104 states, in pertinent part:

(a) Unless otherwise provided in this chapter, no person shall construct, erect, operate, use, maintain, or cause or permit to be constructed, erected, operated, used, or maintained, any outdoor advertising within six hundred sixty feet (660') of the nearest edge of the right-of-way and visible from the main traveled way of the interstate or primary highway systems without first obtaining from the commissioner a permit and tag.

- Tenn. Code Ann. § 54-21-105 states, in pertinent part:

(a) (1) Any person, either owner or lessee, of any outdoor advertising who has failed to act in accordance with the provisions of § 54-21-104 shall remove the same immediately.
(2) Such failure shall render the outdoor advertising a public nuisance and subject to immediate disposal, removal or destruction.
(3) In addition, such failure constitutes a Class C misdemeanor. Each separate day of violation constitutes a separate offense.
(4) In addition, or in lieu of the foregoing, the commissioner may enter upon any property on which outdoor advertising is located and dispose of, remove, or destroy the same, all without incurring any liability for such actions."

- TDOT Rules 1680-02-03-.03(1)(a)(6) and (7)(xv) state, in pertinent part:

(1) Restrictions on Outdoor Advertising adjacent to Interstate and Primary Highways:

(a) Outdoor Advertising erected or maintained within 660 feet of the nearest edge of the right-of-way and visible from the main traveled way are subject to the following restrictions:

6. Application Requirements for New Outdoor Advertising Permits:

(i) No person shall construct, erect, operate, use, maintain, or cause or permit to be constructed, erected, operated, used or maintained, any outdoor advertising device visible from the main traveled way of the Interstate System, Federal Aid Primary System, or National highway System and subject to regulation under Title 54, Chapter 21 of the Tennessee Code without first obtaining from the Department a permit and tag authorizing the same. An outdoor advertising device that is erected prior to obtaining the required permit shall be considered illegal and subject to removal at the expense of the owner as provided in Tennessee Code Annotated § 54-21-105.

7. Processing of Applications.

(xv) If the Headquarters Beautification Office grants the permit, a serially numbered permit and metal tag will be issued to the applicant. The permit and metal tag shall be issued only for the specific outdoor advertising sign face identified on the approved application and only for the precise location footprint as marked on the pavement or as staked in the field. Under no circumstances shall a permit and/or tag be used for or moved to any other location.

4. Date, Time and Place of Hearing:

A contested case hearing for this matter is scheduled for March 6, 2013 at 10:00 a.m. CST at the Tennessee Department of Transportation, Region III, 6601 Centennial Blvd., Nashville, Tennessee 37243.

5. Administrative Procedures Division Docket Number 22.01-118535J

Submitted for publication by:

Sarah C. McBride (BPR #021418)
Tennessee Department of Transportation
P.O. Box 58
Knoxville, Tennessee 37901
(865) 594-4921

The Second Amended Notice of Hearing of Petition for Declaratory Order set out herein was properly served upon the Secretary of State's Office on the 25th day of January, 2013.

By: Sarah McBride
Sarah McBride