Land Use Regulation: Outdoor Advertising

Michigan State University
Cooperative Extension Service
Louise F. Mango, Department of Resource Development
Daniel A. Bronstein, Department of Resource Development

January 1977
4 pages

Jan. 1977

COOPERATIVE EXTENSION SERVICE

MSU
Natural Resources
Facts No. 6

Extension Bulletin E-1071

Land Use Regulation:

Outdoor Advertising

Louise F. Mango and Daniel A. Bronstein
Dept. of Resource Development

This is one in a series of publications designed to acquaint the interested Michigan public with recent concepts in land use guidance and management. The series covers outdoor advertising, junkyards, construction permit qualification systems, historical districts and zoning ordinance administration and implementation.

Some of the outdoor advertising regulations discussed here have been used in only one or two places in the U.S. and others have been used in parts of Michigan. In no case should it be assumed that any of these schemes can be validly applied in any given locality. Cities, towns and villages are specifically delegated the power to enact and enforce zoning or other land use regulations by the state. As a result,

state enabling act legislation may be required before any of the following methods of land use guidance and management can be applied. Therefore, before adopting one of these measures, local officials should consult with the attorney for their governmental unit.

Introduction

The concept of outdoor advertising regulation is not new. In fact, the right of local governments to regulate the manner of advertising within their place of jurisdiction has been recognized since the early 1900's. Today, however, outdoor advertising regulation takes on a renewed importance as more and more communities become concerned with the "visual pollution" that can be created by billboards and other signs for commercial purposes.

Local governments usually regulate outdoor advertising through zoning ordinances, or by enacting separate "sign ordinances". The basic purpose of such sign ordinances and zoning regulations is to restrict advertising to certain districts and to regulate the height, size, construction, placement and type of commercial signs.

There are two general classes of outdoor advertising signs; on-site and off-site. On-site advertising signs, or "business signs" are those which are either directly attached to the service being offered or detached from the service, but on the same property. For instance, a movie marque is an on-site attached sign, while a high-rise revolving gasoline logo is an example of an on-site but detached business advertisement. On the other hand, off-site signs, more popularly referred to as billboards, promote a project or service available somewhere, but not on the same site as the sign. The regulation of each of these forms of outdoor advertising is considered below.

Off-site Outdoor Advertising

The right of local governments to determine the size, type construction and even the placement of billboards is undisputed. A number of communities, for instance, forbid advertising within 200 feet and

regulate advertising within 600 feet of highways for traffic safety purposes. Almost all localities bar off-site outdoor advertising in residential areas and a number of communities restrict such advertising to commercial and industrial districts. Some local governments have enacted sign ordinances which prohibit billboards within 100 feet of churches, schools, public playgrounds and parks.[1]

A few communities have even prohibited off-site advertising altogether, using aesthetic purposes as the basis for exclusionary zoning ordinances.[2] In such cases, local governments generally reason that the adverse aesthetic impact of billboards is deterimental to economic and cultural patterns in the district.[3] The city of Brookline, Massachusetts, for example, enacted an ordinance which barred all off-site advertising from the business district.[4] Based on purely aesthetic grounds, the ordinance was not determined to discriminate against the off-site commercial sign industry. Moreover, in Hawaii, billboards have been excluded from almost all of the most important islands since the 1920's.[5] The Hawaii state law abolishing billboards was based totally on the desire to preserve the scenic beauty of the state.

On-site Attached Outdoor Advertising

Like off-premise billboards, commercial signs on the same property as the service being advertised may be regulated by local governments. Unlike billboards, however, on-site advertising, to date, has never been totally banned by a community. At most, such commercial advertising can only be subjected to reasonable regulation. Generally, on-site business signs are interpreted to be part of the advertised business itself. The authority to conduct a business within a municipality therefore gives the authority to maintain an on-site sign to advertise the business.[6] As a result, ordinances dealing with on-site attached signs simply specify the districts in which signs may be placed (on-site attached signs are generally excluded from residential areas) as well as the size and type of sign which may be constructed.

For instance, the Borough of Raritan, New Jersey enacted an ordinance which banned all signs except

those on-site. These on-site signs were restricted according to district and type. Roof signs, for example, were completely prohibited while permits were required for signs measuring more than three square feet. In business zones, attached signs could not be greater than 20 square feet, or cover more than 10% of the wall surface. Illuminated advertising was prohibited. Similarily, signs in industrial districts could be neither flashing nor nearer than 200 feet to highways.[6]

On-site Detached Outdoor Advertising

Local governments rarely, if ever, ban on-site detached advertising. Once again, on-site signs are considered part of the business or industry. As a result, zoning ordinances usually restrict such advertising to certain districts. Height, size, placement and illumination restrictions are also common. In Coral Gables, Florida, a city ordinance bars red detached signs except on sites zoned for commercial or industrial uses. The ordinance further specifies that the detached signs face certain streets and highways.[7] Similarily, Madison Heights, Michigan passed an ordinance which outlawed all free-standing on-site signs more than 20 feet high. The city reasoned that the right to advertise a business did not include the right to infringe upon community airspace and to destroy common landscapes.[8]

Comments

All forms of outdoor advertising may be technically regulated through the local zoning process. However, cities, towns and villages generally enact sign ordinances that regulate off-site advertising far more stringently than they do on-site advertising. In fact, some municipalities have even banned off-site commercial advertising.

Strict off-site advertising management is probably related to the fact that local governments find the removal or regulation of billboards easy to justify in terms of enhancing community health, safety, welfare or morals. For example, local governments

have regulated billboards for the purpose of avoiding a public nuisance, controlling a traffic menace or for safety reasons.

Some courts have accepted the argument that billboards may distract the attention of drivers and thus create a hazard to public safety.[1]

On the other hand, a number of other arguments often used to justify billboard regulation clearly border on "legal fiction". No doubt the sole purpose of these arguments was to get around the old rule that police power restrictions may not be based on aesthetic reasons alone. For instance, courts in the early decades of this century were especially proficient at identifying the hazards of billboards: billboards were dangerous because they might blow over and hit someone;[12] criminals might hide behind billboards; nuisances committed behind billboards might result in the spread of disease, thus endangering the public health; all sorts of immoral acts might occur behind the friendly shelter of a billboard; and billboards obstruct the sunshine, light and air which are essential to the public health.[13] Even the U.S. Supreme Court adopted this rationale in confirming the validity of a sign ordinance that banned billboards from Chicago residential areas: the court identified the criminals supposedly lurking behind such signs as threats to "unprotected women and children" and therefore justified the billboard prohibition in the interests of community safety, morality and decency.[11]

Today, this sort of "legal fiction" has been discarded and a number of municipalities, like Brookline, Mass., have openly used aesthetic grounds to justify billboard regulation. However, to date, not all courts have held valid sign ordinances based solely on aesthetic reason.

Local regulation of on-site advertising is more complicated than the restriction of billboards and other off-site commercial signs. It must be re-emphasized that on-site advertising is generally considered to be part of the advertised business itself. Attempts to prohibit on-site advertising completely in commercial areas or even to restrict the kind of on-site advertising have generally been declared unconstitutional, discriminatory and unrelated to the public welfare.[9]

However, as illustrated, both on-and-off-site outdoor advertising may be reasonably regulated in terms of size, height, location, illumination and construction.

Application in Michigan

In two relatively recent Michigan cases, the courts have indicated that some restrictions on signs can be sustained, although in neither case was the regulation sustained as to the particular signs in dispute.

In Grand Rapids, the City Code set forth the physical limitations on free-standing signs and required pre-approval by the planning commission. Approval of this general procedure was implied in Souter v. Board of Zoning Appeals.[14] In the case of an Ann Arbor ordinance, the Court concluded that if the intent and effect of the regulations was to totally ban all outdoor advertising, as the trial court had found, then the ordinance would be invalid. The Court did say, however, that "while some provisions of the sign ordinance may be invalid . . . it is doubtful whether each and every sign restriction in the . . . ordinance can properly be said to be unreasonable,"[15] and remanded the matter to the trial court for more specific findings.

Thus, although the signs actually involved in these cases were not removed, the courts have recognized, in Michigan, the right of a community to regulate in this area.

Conclusion

Both on-site and off-site outdoor advertising may be regulated solely by local governments through the zoning process. The type of sign ordinance enacted by the community may be tailored to reflect desired local development objectives. Although sign ordinances are by no means new, they are rapidly emerging as effective instruments in the kit of tools for land use guidance and management.

FOOTNOTES

1. *E. B. Elliott Advertising Company v. Metropolitan Dade County 425 F. 2d 1141 (1970)*
2. *Cromwell v. Ferrier 225 N.E. 2d 749 (1967)*
3. *United Advertising Co. v. Borough of Metuchen 198 A. 2d 447 (1968)*
4. *John Donnelly & Sons, Inc. v. Outdoor Advertising Board 339 N.E. 2d 709 (1975)*
5. *Hawaii Laws 1927, c. 195 and 1965, c. 223*
6. *United Advertising Corp. v. Borough of Raritan 93 A. 2d 362 (1952)*
7. *Blount v. City of Coral Gables, 312 So. 2d 209 (1975)*
8. *Sun Oil Co. v. City of Madison Heights 199 N.W. 2d 548 (1972)*
9. *Montgomery County v. Citizens Building & Loan Association, Inc. 316 A. 2d 322 (1974)*
10. *Norate Corp., Inc. v. Zoning Board of Adjustment of Upper Moreland Township 207 A. 2d 890 (1975) at 894*
11. *Cusack Company v. Chicago 37 S.Ct. 190 (1916)*
12. *City of Rochester v. West 51 N.Y.S. 482 at 485 (1898)*
13. *St. Louis Gunning Advertising Co. v. City of St. Louis 137 S.W. 929 at 942 (1911)*
14. *Souter v. Bd. of Zon. App. of Gr. Rap., 234 N.W. 2d 562 (1975)*
15. *Central Adv. Co. v. City of Ann Arbor, 218 N.W. 2d 27 at 29 (1974)*

Cooperative Extension Service Programs are open to all without regard to race, color, creed, or national origin. Issued in furtherance of cooperative extension work in agriculture and home economics, acts of May 8, and June 30, 1914, in cooperation with the U.S. Department of Agriculture. Gordon E. Guyer, Director, Cooperative Extension Service, Michigan State University, East Lansing, Michigan 48824. Price 5 cents, Single Copy Free to Michigan Residents. 1P-3M-1:77-St