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VIA E-MAIL & U.S. MAIL
Ms. Heather K. Peacon-Corn
City Clerk
City of Smyrna
2800 King Street
Smyrna, GA 30080
hcorn@smyrnaga.gov

Re: Appeal for Atlantic Billboards, LLC

Dear Ms. Peacon-Corn:

I write to you in your capacity as City Clerk for the City of Smyrna on behalf of my client Atlantic Billboards, LLC ("Atlantic"). Pursuant to Section 82-17(e) of the Smyrna Code of Ordinances, please accept this letter as Atlantic's written notice of appeal from the City's denial of its application for a sign at the southeasterly corner of Oakdale Road and the Norfolk Southern Railroad, which has been designated by the City as SIGN-24-120. The grounds for appeal articulated herein are not exhaustive, and Atlantic reserves the right to present additional arguments prior to and at the appeal hearing before the Mayor and City Council.

The City's attempt to deny Atlantic's application is ineffective because my client's proposed sign will be located on property owned by Norfolk Southern. According to the City's Zoning Map, the railroad property within the City of Smyrna has not been zoned. Therefore, Georgia law requires that my client be allowed to install the requested signs. The general rule is that the owner of property has the right to use their property in any lawful manner. E.g., Cherokee County v. Martin, 253 Ga. App. 395, 396 (2002); Picadilly Place Condo. Ass'n v. Frantz, 210 Ga. App. 676, 678 (1993). Because zoning regulations restrict this right, they must be strictly construed in favor of the property owner, and more specifically, the owner's free use of their property. DeKalb County v. Post Apartment Homes, L.P., 234 Ga. App. 409, 410(1) (1998); Martin, 253 Ga. App. at 396; Glynn County v. Palmatary, 247 Ga. 570, 574 (1981); also Fayette County v. Seagraves, 245 Ga. 196, 197-98, 264 S.E.2d 13 (1980). Consequently, land use limitations must (i) be clearly established, (ii) be enforced only as to their plain and explicit terms, and (iii) any ambiguities therein must be resolved in the owner's favor. E.g., Northside Corp. v. City of Atlanta, 278 Ga. 416 (2005); JWIC, Inc. v. City of Sylvester, 278 Ga. 416, 417 (2004); Martin, 253 Ga. App. at 396; Picadilly, 210 Ga. App. at 678; Bo Fancy Productions v. Rabun County Bd. of Comm's, 267 Ga. 341, 343 (1996); Beugnot v. Coweta County, 231 Ga. App. 715, 722 (1998).

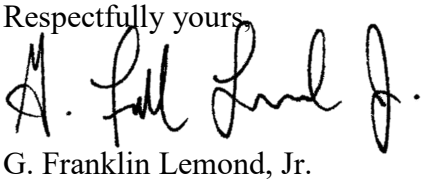
Here, the Norfolk Southern property is unzoned and thus not restricted by any applicable zoning regulations. Although the railroad property has been inside the City limits for decades, the City has chosen not to zone the property. As such, Norfolk Southern has never had any opportunity to appear before the City Council to show the City what zoning and land use restrictions would be appropriate for the railroad property. Thus, any restrictions being enforced by the City are invalid and void. E.g., Davidson Mineral Props., Inc. v. Monroe County, 257 Ga. 215, 217 (1987) (holding county could not restrict use of property). Because the City's official Zoning Map unambiguously shows that the railroad property has not been zoned, the requested sign must be allowed.

Atlantic will also show that Chapter 82 "Signs" of the City's Code of Ordinances was adopted in an improper manner. Georgia's Zoning Procedures Law is mandatory and strict compliance therewith is required. Under Georgia law, an application must be granted if the ordinance upon which denial is based is invalid for any reason. E.g., Tilley Props., Inc. v. Bartow County, 261 Ga. 153, 165 (1991) (holding that "[w]here, as in this case, the zoning ordinance is invalid, there is no valid restriction on the property, and the appellant has the right under the law to use the property as it so desires"); Davidson Mineral Props. v. Monroe County, 257 Ga. 215, 216-17 (1987) (invalidating basis of denial and then mandating that applicant was authorized to proceed with proposed use). As such, Atlantic is entitled to the requested permit.

Atlantic will also show that Chapter 82 "Signs" of the City's Code of Ordinances runs afoul of the Georgia Supreme Court's requirement that cities and counties employ the "least restrictive means" when regulating speech activity. E.g., Coffey v. Fayette County, 279 Ga. 111, 111 (2005) ("Coffey I"); Statesboro Publ'g Co. v. City of Sylvania, 271 Ga. 92, 95-96 (1999). Under this standard, cities and counties must carry a heavy burden in order to justify their sign restrictions. Coffey v. Fayette County, 280 Ga. 656, 657-58 (2006). In order to meet this high threshold, the Georgia Supreme Court requires that evidence be presented to support the regulations. Id. This is because Georgia law is the most protective in the nation toward the use of signs for free speech activity. Coffey I, 279 Ga. at 111 ("This Court has interpreted the Georgia Constitution to provide even broader protection than the First Amendment"). Smyrna cannot meet this strict standard as to its sign code.

If you have any questions regarding this appeal or need any additional information, please do not hesitate to contact me. I look forward to meeting with the Mayor and City Council and to amicably resolving this matter.

Respectfully yours,



G. Franklin Lemond, Jr.

GFL/ss

cc: Mr. Mike Fitzgerald (via email only)