

MINUTES
NAHBA QUARTERLY TELECONFERENCE
JANUARY 18, 2006

The NAHBA Quarterly Conference was held on Wednesday, January 18, 2006, commencing at 2:00 p.m. (EST) with the following participants:

PARTICIPANTS:

1. South Carolina Barbara Wessinger, South Carolina DOT
Keith Melvin, South Carolina DOT
2. Ohio Kerry Yoakum, Ohio DOT
3. Missouri Gregory Wood, Missouri DOT
Joyce Music, Missouri DOT
Scott Taylor, Missouri DOT
Valery Minic, Missouri DOT
4. Massachusetts William Binkley, Massachusetts DOT
Bill Hicks, Massachusetts DOT Legal Office
5. Viacom Joe Little, Viacom
6. Idaho Jan Strough, Idaho DOT
7. FHWA DC John Turpin, FHWA Washington
Janis Gramatins, FHWA Washington
Nina Kelley, FHWA Washington
Rebecca Bennett, FHWA Washington
Bob Black, FHWA Washington, Legal Office
8. TBE Group Clyde Johnson, TBE Group
9. North Carolina Brenda Grady, North Carolina DOT
Scott Wheeler, North Carolina DOT
10. Tennessee Gina Hennen, Tennessee DOT
Glenn Paris, Tennessee DOT
Jane Petitt, Tennessee DOT
11. ClearChannel Drew Hoffman, ClearChannel
12. Georgia Joanna Campbell, Georgia DOT
13. Mississippi James Isonhood, Mississippi DOT, Legal Office
John Lee, Mississippi DOT

AGENDA / DISCUSSION

1. Update on Mississippi DOT proposed pilot project regarding non-conforming signs at interchanges? (Jimmy Isonhood - MSDOT)

Discussion: Jimmy Isonhood, Mississippi DOT, provided an update on the MS DOT pilot project. The project is designed to classify interchanges as commercial and industrial areas, subject, however, to the 500-foot spacing rule. The project would identify the commercial and industrial area, which could be from ½ to 1 mile away from the interchange (to be determined by MS DOT). The area would be considered commercial and industrial even though it may be

unzoned with no visible commercial activity. The area would be considered commercial and industrial due to proximity to an interchange. In order to participate in the project, sign owners would have to remove nonconforming signs in exchange for erecting in this designated interchange commercial and industrial area. The objective is to eliminate spot zoning by local governments in proximity to interchanges and concentrate billboards at interchange rather than other locations. The pilot project is conceptual at this time. Jimmy will update us at the next teleconference with his progress.

2. Status on the FHWA documents – (Jimmy Isonhood – MSDOT)

Discussion: Jimmy Isonhood, MSDOT, is handling a NAHBA project in which the FHWA ODA documents, scanned from the FHWA Offices in Washington DC, are compiled into a retrievable/searchable database to be used as a resource for the NAHBA membership. The immediate task is to convert the scanned documents into PDF format. Jimmy advised that a recent reassignment in his staff may cause a delay in his progress. However, he is targeting March as the completion date. Jimmy will keep us informed as to his progress at the next teleconference.

3. Update on South Carolina's pilot project (Keith Melvin – SCDOT)

Discussion: Keith Melvin provides a brief summary of the SC Pilot Project. Essentially, it is the ability to upgrade an existing nonconforming billboard along two (2) specific Interstates in exchange for the removal of two (2) nonconforming signs anywhere in the state. SCDOT's is in the process of submitting its pilot project to the FHWA in accordance with their "Guidance Memo on the Approval Process for ODA Control Pilots", dated 8-30-05. (The Guidance Memo can be found on the NAHBA website, www.NAHBA.org). One of the guidelines requires compliance with NEPA. Currently, FHWA is reviewing the type of document (CE, EA, or letter) necessary to be submitted by SCDOT in order to comply with the guidance memo and NEPA requirements.

4. Update on Neutral Stakeholder Assessment Project (Nina Kelley – FHWA)

Discussion: Nina Kelley, FHWA HQ Services and High Priority Projects Team – Team Leader, summarized that the purpose of the Neutral Stakeholder Assessment Project was to identify outstanding outdoor advertising control issues and concerns held by various stakeholder groups. The effort would be to place these issues and concerns in written form and evaluate them to analyze ways to resolve the differences between the groups. The objective of this analysis is to explore possible legislative changes to the federal Highway Beautification Act (HBA) to better implement the outdoor advertising control programs. She advised that FHWA has contracted with the US Institute of Environmental Conflict Resolution (Institute), in Tucson Arizona, to coordinate this multi-year process. The initial steps of the Institute will be to identify a committee of approximately twelve (12) stakeholders (representing the stakeholder groups – OAAA, Scenic America, NAHBA, FHWA, and sign

companies) that will be charged with selection of the third party neutral assessor. Subsequent steps entail identifying the issues and identifying how to deal with those issues. Ms. Kelley anticipates the committee will be formed within the next 2-3 weeks. She anticipates that in the next 4-6 weeks, a notice will be published in the Federal Register by FHWA, advertising the project.

5. Does federal law mandate control of junkyards on non-interstate routes?

Discussion: Clyde Johnson confirmed that as a result of the ISTEA (Intermodal Surface Transportation Efficiency Act of 1991), the federal-aid primary system was eliminated. Prior to 1991, the federal Junkyard Control Act, 23 USC 136, required states to regulate junkyard adjacent to Interstates and federal-aid primary routes. With the elimination of the federal-aid primary system in 1991, federal law now only requires states to regulate junkyards adjacent to Interstates. Gina Hennen, TN DOT and Jan Strough, ID DOT, indicated that, although federal law may not require regulation on the federal-aid primary system, their state law requires them to regulate on primary routes, as well as Interstates. Kerry Yoakum, OH DOT, indicated that junkyards are regulated by Department of Public Safety in Ohio, and therefore, are not an issue for his office.

6. How do other states handle applications for permits in areas that are obviously rural/agricultural but have been zoned by the local jurisdiction, either city or county, as commercial or industrial. Specifically are the states just permitting signs in these areas since they have the zoning or are they questioning the zoning in some way? (Joanna M. Campbell - GADOT)

Discussion: Joanna Campbell, Georgia DOT, indicated that Georgia has seen an increase in local zoning along interstates and control routes. She believes some of the local zoning is tantamount to strip zoning just for outdoor advertising purposes. Joe Little, Viacom, indicated that Clyde Johnson and he worked on regulations last year to curb spot zoning issues in Georgia. Joanna does not believe those regulations are effective. Bob Black, FHWA, indicated that Louisiana revised its regulations to require a certain number of business activities be located in commercial and industrial zoned areas. Joyce Music, Missouri DOT, indicated MO DOT requires commercial activity to be present in commercially zoned areas. Scott Wheeler, NCDOT, indicated that local zoning in NC is determined case by case. NCDOT requires the local government /developer to prove the legitimacy of the commercial activity and provide maps showing the location of the commercial activity. Jimmy Isonhood, MS DOT, indicated that MS DOT regulations requires the developers/local government to show them maps and also requires that the area has to be developed in five (5) years. Kerry Yoakum, OHIO DOT, suggested that Joanna review 23 CFR 750.708(a) – (d), which provides that “a zone in which limited or commercial or industrial activities are permitted as an incident to other primary land uses is not considered to be a commercial or industrial zone for outdoor advertising control purposes.”

7. Non conforming signs on Right of Way Acquisition Projects - How do other states pay for the cost of removing these signs from the proposed right of ways. (Gina Hennen – TNDOT)

Discussion: Most of the states indicated that they pay for the removal of nonconforming sign impacted by a highway improvement project. Jimmy Isonhood, MS DOT, discussed the case of Lamar Co., LLC v. State, 256 Ga.App. 524, 568 S.E.2d 752, 2 FCDR 1926 (Ga.App.2002) which held “[P]roperty rights are subject to contractual provisions in leases. Here, the lease specifically provided that, if the property was sold, the owners could terminate the agreement by providing 90 days advance notice. When the owners sold the property to the State, they terminated the lease pursuant to this clause. In so doing, the owners effectively extinguished Lamar's interest in the property. As Lamar no longer has a compensable interest in the property, the State is not required to treat Lamar as a condemnee.”

8. DOT experience with LED signs (Brenda Grady – North Carolina DOT)

Discussion: Brenda Grady and Scott Wheeler, NCDOT, indicated that NCDOT is concerned with the light intensity of LED signs. They believe it is a safety issue that should be researched. Janis Gramatins, FHWA, pointed out the difficulties in researching whether LED signs pose a distraction to drivers because all the other variables distracting drivers, i.e. cell phones, weather, etc. It may be a combination of multiple factors. Most seemed to agree that curtailing the brightness factor or lumination of an LED is a challenge to states. Georgia and South Carolina added that they have regulations which give the DOT discretion to determine if the LED is a safety hazard. Kerry Yoakum, Ohio DOT, indicated that they had a lawsuit in which Ohio DOT hired an expert to discuss the lighting standards of particular displays. He indicated those lighting standards were case specific and may not be applicable guidelines for cross-the-board lighting regulation. His case was eventually settled out of court. As a side issue, Kerry stated that ClearChannel has introduced synchronized billboards in his area – seven (7) signs are being used to display synchronized messaging.

9. Miscellaneous:

(a) West Virginia DOT has taken advantage of the new provision in the SAFETEA-LU federal legislation to create a new inventory program. [The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), enacted on August 10, 2005, included changes in the definition of the Transportation Enhancement (TE) activities. See <http://www.fhwa.dot.gov/environment/te/guidance.htm>. The Act inserted *Inventory before Control and Removal of Outdoor Advertising* to clarify existing eligibility. The SAFETEA-LU Conference Report provided an explanation for this amendment, which FHWA incorporated into its Transportation Enhancements Guidance Supplement.

(b) Annual NAHBA Conference is scheduled for August 27-30, 2006 in Cleveland, Ohio. The hotel accommodations have been secured and will soon be posted on the NAHBA website. Barbara Wessinger, SCDOT, encouraged feedback from the membership on topics to discuss at this conference. Kerry Yoakum, Ohio DOT, is assisting in the planning and coordination of this event. [NOTE: NAHBA is offering free registration and approved expense reimbursement for anyone desiring to be a speaker at the conference. For more information, see the NAHBA website, www.NAHBA.org.]

A special thank you was expressed to FHWA for facilitating the teleconference. Barbara Wessinger will notify the NAHBA membership of the next quarterly teleconference date and will poll the membership in advance of the teleconference for issues to discuss.

With there being no additional items for discussion, the teleconference was adjourned at 4:15 p.m. (EST)

Barbara M. Wessinger
NAHBA Chair