

**UNEXPECTED ISSUES WITH EATING, SHOPPING AND SLEEPING:  
WHAT IS ON THE MINDS OF RESTAURANT, RETAIL & HOSPITALITY**  
PRESENTED BY THE RESTAURANT, RETAIL & HOSPITALITY PAC, 2016 BUSINESS MEETING

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**"Signs, Signs, Everywhere Signs, Blocking All the Scenery"**

*Can businesses recover damages caused by the loss of signage?*



It should come as no surprise that governmental regulation of commercial on-site and off-site signs on private property is and has been a contentious, oft-litigated issue since the beginning of time. The regulation of commercial signage occurs through many lenses from zoning, overlay or planning districts to development/construction permitting and the exercise of eminent domain. The first sign regulations arose as far back as the 1880's out of the need for public safety and keeping obstructions from pedestrian and vehicle rights of way.<sup>1</sup> A substantial body of law has developed over the years on the government's authority to regulate and the rights of owners to recover compensation.<sup>2</sup>

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<sup>1</sup> Hexamer v. Webb, 4 N.E. 75 (N.Y. 1886).

<sup>2</sup> See Nichols on Eminent Domain §23.03. See e.g. Metromedia v. City of San Diego, 453 U.S. 490, 101 S.Ct. 2882 (1981); H&H Operations v. City of Peachtree City, 248 Ga. 500 (1981).

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**A. This One, Not That One**



Across many local jurisdictions, the current trend is to eradicate high-rise, neon, or pole signs in favor of smaller, brick and mortar decorative monument signs, which can be costly. Likewise, billboard signs along highways, rooftops and on operating commercial properties often are a target of limitations and even outright bans in some communities. This trend has developed out of visions of tree-lined streetscapes, pedestrian friendly retail districts, mixed-used developments, and a more uniform aesthetic.

By contrast, the commercial needs of marketing and advertising require prominent and effective signage to draw in customers to retail, restaurant and hotel spaces. Billboards in particular are a prevalent and valuable source of advertising for businesses. Intended to promote economic growth and revitalization, the aesthetic visions of the local council or board may actually discourage new development and growth, and even lead to closed shops and restaurants due to a reduced customer base.

Governmental regulation of private ownership and use of signs is an exercise of the police power encompassing a wide range of classifications and procedures. Signage rights are a defined, property right that can be taken or damaged through regulation, zoning, or direct condemnation. The rights of sign owners affected by a taking include:

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- A leased or fee interest in the underlying land;
- An ownership interest in the sign itself;
- An interest in the permit that allows the sign to be erected and maintained.



As an exercise of police power, both zoning and eminent domain are subject to constitutional requirements of equal protection, due process, and the prohibition against taking property without the payment of just compensation.<sup>3</sup> Because this exercise of the police power limits private uses of property and property rights, it can lead to economic loss.

The restriction of or ban on signage rights constitutes a taking of private property rights whether it occurs through regulation, zoning or a condemnation.<sup>4</sup> Jurisdictions vary as to the classification of signs and how compensation is calculated and paid if at all for those rights. On the one hand, the most clear cut example is the direct taking of property for a public road expansion that requires removal of a commercial sign located in the new right of way. The condemning authority may pay for the physical relocation of the sign to a new spot, or for the greatly depreciated value of the physical components of the sign. On the other hand, a billboard that must

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<sup>3</sup> See *Rockdale County v. Burdette*, 278 Ga. 755 (2004). See generally *Tinsley Media, LLC v. Pickens County, Georgia*, 203 Fed. App. 268, 273 (11th Cir. 2006) (striking down a sign ordinance because the County did not include its legislative intent in the ordinance which evidenced to the Court that the County had no government interest in enacting the ordinance).

<sup>4</sup> *Nichols on Eminent Domain* §23.03(5)(a); see also *Lamar Advertising of South Georgia, Inc. v. City of Albany*, 389 S.E.2d 216 (1990).



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be moved out of the new right of way, but cannot be reinstalled in a new location due to updated zoning prohibitions is a murkier example. The owner's vested interest in the sign and the permit are rights that should be compensated if lost due to a taking.<sup>5</sup>

**B. Personal Property vs. Real Property**

State laws vary as to how to classify the nature of the property interest and how signs should be compensated. In some jurisdictions, the condemnor may argue that the sign is personal property, not real property, and therefore not subject to compensation based on fair market value. This is particularly true with billboards.<sup>6</sup> The sign owner may argue that (1) the sign is affixed to the real estate and therefore compensable as an improvement to the real estate; or (2) in the case of a billboard, the sign itself provides an income stream separate from the real estate and therefore should be compensable as a claim for leasehold, or for business damages, depending on the jurisdiction. If a lease identifies the sign as personal property that is removable upon termination,

According to the Federal Highway Administration ("FHA"), the states may decide under their own eminent domain laws whether signs are personal or real property and determine compensation under the Uniform Relocation Assistance and Real Property Act.<sup>7</sup> If a sign is designated as personalty, then according to the FHA relocation expenses are payable. If a sign is classified as real property, the value of the rights taken, i.e. income loss or leasehold value, must be compensated.<sup>8</sup>

Some states have determined that signage is a structure on the land or considered part of the real estate because it is installed.<sup>9</sup> Other states have held that signs are trade fixtures and personalty.<sup>10</sup> Despite these varying classifications, condemning authorities are uniformly required to pay compensation for the loss of signage due to a taking.<sup>11</sup>

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<sup>5</sup> See e.g., O.C.G.A. §32-6-83.

<sup>6</sup> Hernando County v. Anderson, 737 So. 2d 569 (Fl. Dist. Ct. App. 1999).

<sup>7</sup> 54 Fed. Reg. 8912 (Mar. 2, 1989).

<sup>8</sup> See id.

<sup>9</sup> City of Scottsdale v. Eller Outdoor Advertising Co., 579 P.2d 590 (Ariz. Ct. App. 1978); Lamar Corp. v. City of Richmond, 402 S.E.2d 31 (Va. 1991).

<sup>10</sup> Lamar Corp. v. State Highway Comm'n of Miss., 684 So.2d 601 (Miss. 1996).

<sup>11</sup> Nichols on Eminent Domain §23.03(5); see, e.g. State v. 3M National Advertising Co., 653 A.2d 1092 (N.H. 1995).



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