

Facts & Issues: Billboards in Comal County: Impacts of Outdoor Advertising on Our Community

A Study by the League of Women Voters of Comal Area

About the Study

Members of LWV-Comal Area adopted a study of “Billboards in Comal County” in May 2013, in response to growing citizen concerns about a proliferation of outdoor advertising signs, especially on rural roads in the county.

The LWV-CA Billboard Study Committee, called the committee in this document, was appointed and began meeting in November 2013. In order to gain an understanding of the varying perspectives regarding outdoor

advertising, the committee interviewed elected officials, advertisers, leasers, a marketing professional, and activists opposed to the spread of billboards.

Citizens gained significant information from the Texas Department of Transportation, or TxDOT, at a LWV-sponsored public meeting held in Comal County in April 2014, when TxDOT officials announced the results of their recent inventory of outdoor advertising signs in the county.

In addition, committee members conducted their own canvas of signs in the summer of 2014. This report is a compilation of the facts and viewpoints gleaned during the committee investigations. The study lists the people interviewed on page 12. Their help was invaluable.

The stated focus of the study is “the impact of billboards on the environment and the economy of Comal County, in both the incorporated and unincorporated areas.”

US and Texas Regulations

Introduction

Outdoor advertising is typically divided into two parts: on-premises signs and off-premises signs, known as “billboards.” The committee researched the facts and issues surrounding off-

premises signs. In this report, “billboards” and “outdoor advertising” are used interchangeably. This Facts & Issues will concern itself with the state of outdoor advertising regulations in Texas and in Comal County, in particular, in 2014.

The federal authority that concerns outdoor advertising comes from the Highway Beautification Act, passed in 1965 under President Lyndon Johnson’s America the Beautiful Initiative. The act’s purpose is to “promote the health, safety, welfare, morals, convenience, and enjoyment of the traveling public.” The act controls outdoor advertising, as well as other potential eyesores like junkyards, on federal-aid primary, interstate, and national highways. The legislation allows the location of signs in commercial and industrial areas, mandates a state compliance program, requires the development of state standards, promotes the expeditious removal of illegal signs, and requires just compensation for takings.

Exceptions are for directional and official signs, as well as for on-premises

signs for commercial activity. Signs are allowed in commercial and industrial areas, but their spacing, height, location, size, and lighting are limited by law. The act was amended in 1991 and 1995 to stipulate that no new billboards be erected on highways designated by the states as “scenic” byways.

The U. S. Department of Transportation through the Federal Highway Administration provides oversight and assistance to the states through their departments of transportation. Each state’s department administers and enforces the laws in that state. According to the act, the states must provide “effective” control of outdoor advertising or lose up to 10% of federal highway funding annually.

In Texas, the body responsible for permitting and regulating outdoor advertising is the Texas Department of Transportation (TxDOT) in their Right-of-Way Division. The Right-of-Way Division has approximately 21 employees and is revenue neutral. All the funding for the running of the department comes from monies collected.

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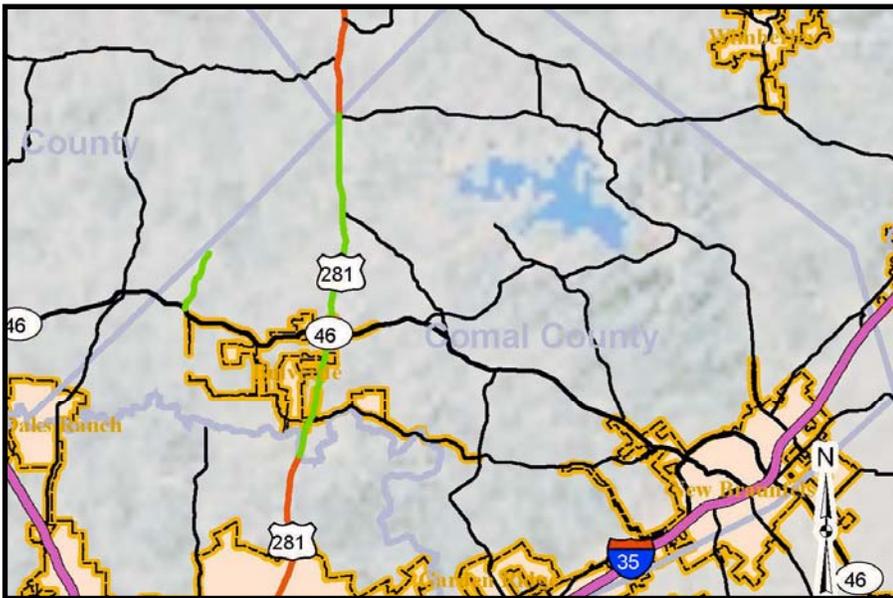


Fig. 1. US 281 (green line) is Comal County's only prohibited billboard road.

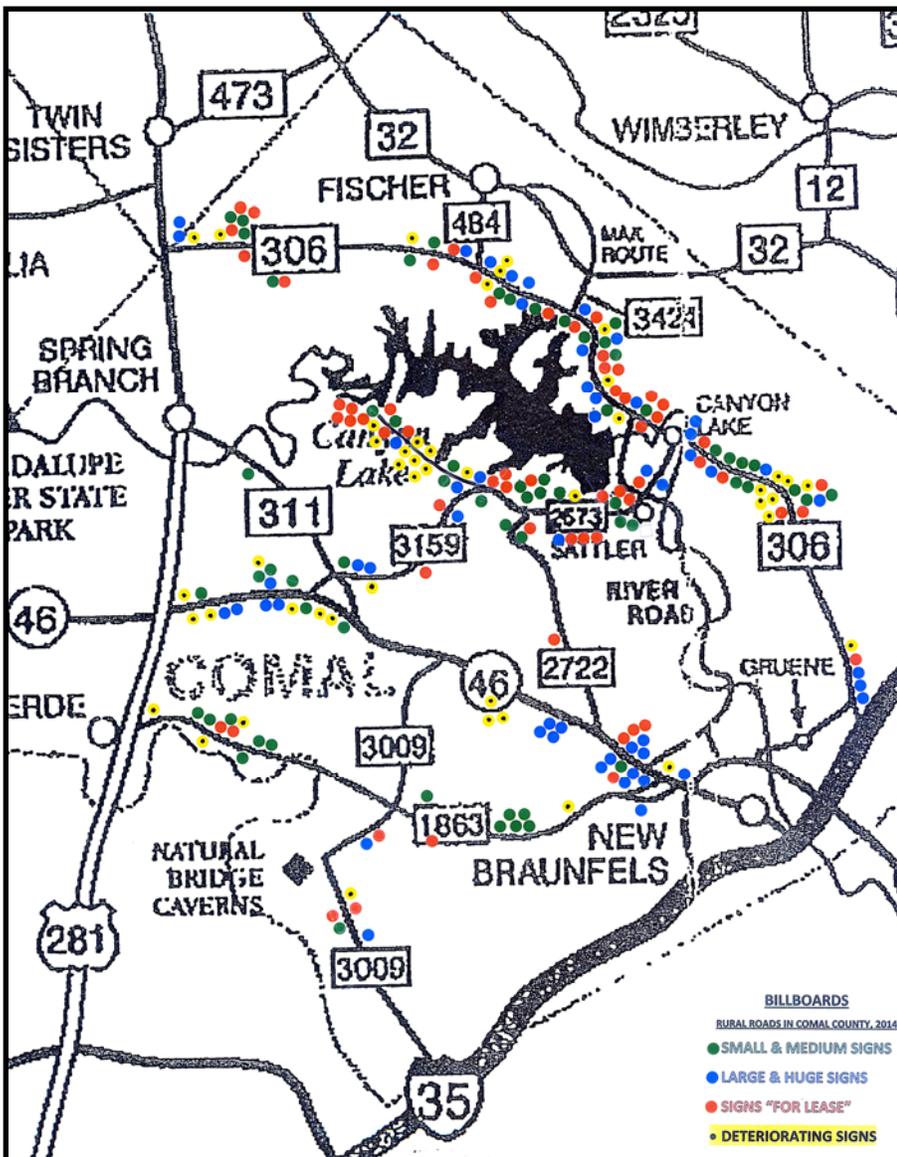


Fig. 2. Dots on map indicate billboard structures in unincorporated areas of Comal County.

The Texas Transportation Code Title 6, Subtitle H, Chapters 391 and 394 are conditioned upon the Texas Legislature's compliance with the Federal Highway Beautification Act. Chapter 391 allows for the regulation and enforcement of signs on interstate and primary systems and "certain roads." In 1985 rural roads were added to the roads where outdoor advertising was regulated. Chapter 394 allows for the regulation and enforcement of signs on rural roads. These regulations are contained in the Texas Administrative Code, Title 43, Part 1, Chapter 21, Subchapter I for interstate and primary highways, and Subchapter K for rural roads.

There are several differences between the rules governing interstate highways and primary systems and those governing rural roads. For instance, the maximum height of a sign is set at 42.5 feet by regulation governing interstate and primary roads, but the same height is contained in the act itself for rural roads.

Municipalities and incorporated areas have their own sets of regulations for signs within their boundaries. The discrepancies between rules for signs on roads designated differently makes the understanding of the rules and their enforcement particularly challenging for sign owners and the Right-of-Way Division of TxDOT.

Prohibited Roads for Signs

Chapter 391, section 391.252 provides that certain roads have no outdoor advertising on them for purposes of preserving the beauty of the surrounding countryside. TxDOT provides maps of these roads.¹ In Comal County, US 281 is a prohibited road for signs. See Figure 1 on this page.

Licensing and Permitting

The major focus of the regulations is the licensing and permitting of signs. While the funding of the division of TxDOT that manages the permitting and regulation of outdoor advertising comes from the fees collected, manpower and budget limit the ability of the agency to stay ahead of violators. An inventory of all of the signs in Comal County was recently completed by TxDOT, see page 5.

Sign owners are required to hold a license that is renewed annually and is not transferrable. To obtain the license,

“The billboard industry insists it doesn't just sell sign space,” Vela says. It also gives it away to law enforcement to post most-wanted photos, and to emergency managers to use during emergencies. “That's all free of charge,” Vela says. “So we want to give back to our communities that we're working in.”

Lee Vela, President of Outdoor Advertising Assn. of Texas, quoted in 9-6-14 story by National Public Radio

holders must provide a surety bond. The bond provides the money the state would need to remove an illegal sign. For the permittee, the process is neither complicated nor expensive.² The current cost for a license is \$125, with a \$75 annual renewal fee, plus the surety bond. The fee for a permit is currently \$100, with a \$75 annual renewal fee. Permit applications are verified by receipt of proof that the sign meets all criteria. Notarized signatures are required from the landowner and applicant, as well as the municipality, if that is applicable.

Permits are transferrable and may be cancelled if (1) the sign is not maintained, (2) it is damaged beyond repair, (3) the property owner terminates the lease agreement and withdraws permission for the sign to be on their property or (4) the sign goes 365 days blank or without legible ads. Photographic proof is necessary for the fourth instance. If a sign is multi-faceted, all sides must be blank or without legible ads to meet the fourth criteria. If a sign no longer meets the initial requirements, the sign becomes “nonconforming.”

Enforcement

The definition of a nonconforming sign is “a sign that was lawfully erected but that no longer complies with a law or rule because of changed conditions or because the law or rule was amended after the sign was erected or that fails to comply with a law enacted or rule adopted after the sign was erected.”³ A nonconforming sign will not have its permit renewed until and

unless it has been restored and conforming to the regulations. Field inspections are one way in which an illegal or nonconforming sign might be found. Another is by receipt of an Outdoor Sign Complaint,⁴ which is submitted to the Right-of-Way Division by the public. The levying of fines or any action to remove a sign is turned over to the Texas Attorney General's office.

Exempt Signs

Certain off-premise signs are exempt from the permitting process. These include signs in the highway/rural road right-of-way like traffic, memorial, or logo signs. There are other types of exempt signs. Three examples are those required by the Texas Railroad Commission at entrances and exits of petroleum fields, signs that give information on underground utilities, and several types of public service signs. Signs of nonprofit organizations that give information about meetings, services, or events on interstate highways and primary roads must have a permit, but the organization is not required to have a license. On rural roads, signs of nonprofit organizations that give information about meetings, services, or events are exempt as long as the sign has an area less than 32 square feet. A full list of exemptions is in the Texas Administrative Code.⁵

Size and Placement

Sign size and placement are different for those on interstate and primary systems from those on rural roads. This is an example of how parsing the regulations can be difficult, making enforcement challenging. This is only a brief overview. The Texas Administrative Code has full details.⁶

On interstate highways and primary systems, signs must be located in “a commercial or industrial area,” and the faces may have an area of no more than 672 square feet and be no more than 25 feet high and 60 foot long. The maximum height for the sign as a whole, including the structure as well as the face, is 42.5 feet.

Signs on the same side of a freeway cannot be closer to each other than 1500 feet. If not in an incorporated area and not on a freeway, signs cannot be within 750 feet of each other,

or, if inside an incorporated area but not on a freeway, within 300 feet of each other. If buildings or other natural objects separate signs, the spacing requirements do not apply if only one sign is visible from any one location. Signs cannot be closer to the right-of-way than five feet.

The regulations stipulate that a sign on a rural road must be located within 800 feet of a recognized commercial or industrial business on the same side of the road. The size and height regulations are the same as for interstate highways and primary roads. Electronic signs have a separate set of regulations that are covered on page 8. On rural roads a sign with an area of less than 50 square feet that advertises a small business [defined by Government Code 2006.001]⁷ is allowed and requires no permit.

Municipalities, or incorporated areas, have their own regulations about sign placement. Typically the permitted areas are industrial or commercial, see page 4.

Lighting

Rules for lighting on interstate highways, primary systems, and rural roads appear to be essentially the same. Lights cannot be flashing, intermittent, scrolling or animated. They must be shielded and not interfere with the driver's view of traffic signs, traffic signals, or the highway. They can face up or down, but cannot have more than four luminaires per sign face. A luminaire is the complete light unit: frame plus bulb, etc. The intensity of the light cannot interfere with the driver's operation of a vehicle.

Conclusion

The Right-of-Way Division of TxDOT is the arm of the state tasked with the oversight of off-premise outdoor advertising that includes applications, permitting, and enforcement. There are different classes of regulations depending on whether a road is defined as an interstate highway, primary system, or a rural road. While these rules and regulations seem arcane to the observer, the Right-of-Way Division is manned by a dedicated team who works with the public and sign owners to maintain the balance of private property rights and the public interest.

Municipal Regulations

By Texas law, municipalities have much greater power to make and enforce restrictions on activity in their territorial jurisdiction than counties do. Sign ordinances are no exception. The three incorporated areas in Comal County: New Braunfels, Bulverde, and Garden Ridge, all have prohibitions against billboards.

The prohibitions, however, vary. Usually it is safe to assume that ordinances like those controlling signs include boilerplate language. All three sign codes in Comal County, however, are strikingly different. Even the definitions of terms are different. For instance, Bulverde and New Braunfels have different definitions for “monument” signs. Also the terms the three municipal codes chose to define are fundamentally different, perhaps reflecting the cities’ different histories. Bulverde has not been a municipality as long as New Braunfels, and that is reflected in the ordinances.

For instance, the New Braunfels ordinance regarding mobile billboards has two cut-off dates, reflecting the times when the ordinance was amended to include a new form of signage. The New Braunfels original 1985 sign ordinance was essentially rewritten in 2006, and has only been slightly amended since then. The introduction of mobile billboards predated Bulverde’s incorporation, so they are just another part of the sign code.

Bulverde is the only incorporated area to have a dark sky ordinance, which is discussed in more detail, see page 5. The Planning Commission of New Braunfels, however, recommended approval of a draft ordinance regarding dark skies in August 2014. As yet, that item has not gone before city council.

New Braunfels

The City of New Braunfels’ sign regulations can be found mostly in Chapter 106-11 through 106-13.⁸ In the ordinance, a “billboard” is defined as “an off-premise sign on any flat surface erected on a framework or on any structure, or attached to posts and used for, or designed to be used for, the display of bills, posters, or other advertis-

ing material.” Such signs are nonconforming and therefore illegal.

This definition seems inclusive, but the actual prohibition against billboards in the city is less so. There are appeals to the prohibition. Any billboard company or owner that wants a variance must go before the Construction Board of Appeals, which last met in 2009. Another exception, the Conditional Sign Permit, is only granted by city council for those who want to deviate from the standards of the sign code.

There are also two exemptions to the code. The first is where TxDOT is constructing new or expanding old roads, where billboards already exist. The exemption, however, is very specific about how little the billboard can change while being relocated.

The statute specifies that nonconforming signs that were legal before the ordinance was passed are still legal. They may be maintained, but they may not be improved or repaired if the repair costs more than 60% of the initial value of the sign. In reality, that means a billboard can be repaired until its supporting structure deteriorates. The purpose of the ordinance is to eliminate all billboards in the city limits and its ETJ eventually, except for those areas controlled by TxDOT. City staff has indicated that this attrition process has already eliminated several billboards.

Chapter 106-13 involves the second, more extensive exemptions. The exempt signs are, however, strictly regulated. They include area directional signs and temporary signs, which fall into two categories, informational and mobile. Of course, in the city there are many billboards on-premise. Those have numerous restrictions that involve size, height, placement, and lighting and are found in Chapter 106-14. The ordinance makes clear that on state or national highways TxDOT is the arbiter.

If a sign is damaged or becomes deteriorated, the owner has 30 days, with a 7-day extension if work is evident by a work order, to demolish the structure. If the city determines that the sign is

an eminent danger, it may demolish the sign at the owner’s expense. Failure to comply with this part of the ordinance involves a fine up to \$1000 per day of noncompliance.

Enforcement is another issue. There are only three code enforcement officers for the whole city and its ETJ.

Bulverde

Bulverde’s sign code can be found under Chapter 3: Building Regulations, Article 3.08.⁹

The cutoff date for Bulverde’s nonconforming signs was March 28, 2006. Any sign constructed before that date was grandfathered. The sign code prohibits pre-existing signs that advertise discontinued businesses or become abandoned or damaged. As with New Braunfels, every new sign must be permitted by the municipality with exact specifications. Bulverde requires fees to cover administration of code enforcement, like New Braunfels. Both municipalities also provide for variances to new or existing sign construction through action of the city council.

Bulverde instructs its public works director to inspect signs periodically to determine whether they are still in compliance. Any removal is at the owner’s expense. Interestingly, Bulverde’s sign code deals with wind pressure in its design specifications, while New Braunfels and Garden Ridge do not. Bulverde echoes New Braunfels’ 60% limit on existing structures’ improvement. Bulverde also has a dark sky ordinance (Art 3.09), which New Braunfels lacks, because of Bulverde’s history, rural nature, recent

Acronyms

EBB	Electronic Billboard
ETJ	Extra-territorial jurisdiction
FHWA	Federal Highway Administration
HBA	Highway Beautification Act
OAAA	Outdoor Advertising Assn of America
TxDOT	Texas Dept of Transportation

incorporation, and close vicinity to Camp Bullis.

The Dark Sky ordinance went into effect July 8, 2003. It includes all exterior lighting, including existing lights in its subdivisions. Lighting grandfathered under the dark sky ordinance has a 50% improvement limit, after which it must be removed. The ordinance defines and prohibits both “light pollution” and “light trespass.”

Light pollution is the more generalized term. It is defined as “any adverse effect of manmade light, including, but not limited to, light trespass, uplighting, the uncomfortable distraction of the eye, or any manmade light that diminishes the ability to view the night sky; often used to denote urban sky glow.” Light trespass is “light falling where it is not wanted or needed, generally caused by a light on a property that shines into the property of others.”¹⁰ So light trespass is associated with not being a good neighbor.

The ordinance calls for nighttime cutoffs of daytime business lights. It stipulates a maximum luminosity of a 20-watt bulb for each light in unshielded lights and a maximum luminosity of a 60-watt bulb for each light with shielded lights. It prohibits any uplighting, including on vegetation. Floodlights must be shielded so no light escapes downward past 25° vertically. Lights must be shielded so that the lighted area is at most 85° from vertical under the light, and they may not shine on neighboring property or in a public right-of-way.

Garden Ridge

Reflecting possibly Garden Ridge’s shorter life as a municipality and its smaller population, the sign code of the City of Garden Ridge is much simpler than that of the other two county cities. The code was adopted in January 2003.¹¹

The list of sign code definitions is also strikingly shorter. Only “sign,” “perimeter,” and “height” are specifically defined. It should be noted that perimeter, not area, is the distinguishing size feature, unlike the other two codes. The fourth definition is the most interesting:

Other words, phrases and terms used herein shall be given their usual and customary meaning except where the content clearly indicates a different meaning. Words in the present tense include the future; singular words include the plural; and the word “shall” is mandatory.¹¹

Its code violation fee agrees with Bulverde’s except for a lower threshold of \$10 per day up to the shared \$500 per day penalty for gross infractions after a grace period.

The city bases its sign limitation on the type of district the sign is located in. Residential/agricultural, single family residential, and country club zones are the most restrictive, with other more commercial or industrial zones being less so. Illuminated signs in the second

group of zones must be shielded.

There is an interesting section on “special advertising” that prohibits “any type of advertising, not covered within this Ordinance 55.” The section then lists and describes 14 specific signs that are grandfathered. If they are replaced, they must come into the 20-foot-perimeter requirement.

Outside of these distinctions, and with the exception of Bulverde’s dark sky ordinance, the Garden Ridge’s sign prohibition is much more sweeping than the other two. It covers all business, service and activity advertising, regardless of size, except for residential real estate and services performed by individuals from their homes.

The building inspector is tasked with examining every sign in the city each January, noting any signs that are unsafe or deteriorating and notifying owners. The owners then have 30 days to comply, or the sign will be removed at their expense.

Article 15 of the code, the non-conforming sign abatement, is the most interesting. It states, “All existing signs not conforming to the provisions of this ordinance shall be brought into compliance or removed within six (6) months of the effective date of this ordinance,” which was January 2003.

Citizens in the three incorporated areas have sign restrictions, but those restrictions vary. In spite of the differences, billboards in a city are much more regulated than in the county.

TxDOT Inventory and Enforcement of Outdoor Advertising

TxDOT chose Comal County for its first-ever county-wide inventory of outdoor advertising signs. LWV-CA invited Wendy Knox, TxDOT outdoor advertising regulatory supervisor, and Colt Amberg, TxDOT Right-of-Way Division, to present their findings at a public meeting in April 2014. The inventory of billboards took place between September 2013 and March 2014.

There are 926 lane miles, counting each direction separately, that fall under the responsibility of TxDOT in Comal County. The officials counted a total of 442 signs in Comal County. At the time of the survey, only 62.6% of the total, or 277, were permitted signs. These were owned by a total of fifty license holders. There were 165 signs that did not have an active permit. At the time of the meeting, 23 were clas-

sified as exempt, owners had removed 26 signs and provided photographic evidence of the removal, six signs had received a permit, and 15 were actively seeking permits. There were still 61 orders of removal that had been received by owners who were still within the 45-day response time. At that time, 31 sign files had been sent to the Office of the Attorney General for Injunctive Relief, and three of the illegal

signs were still in process to determine their final status.

Six months after the public meeting, according to Colt Amberg, outgoing member of the non-permitted signs program, ten sign owners were in the process of applying for a permit. The department closed 91 files. Thirty-three signs are now exempt, 18 are now permitted, and 40 were removed. TxDOT sent 61 cases from Comal County to the Attorney General’s office for injunctive relief and were in the process of sending the last four files due for injunctive relief. The de-

partment also took action on some political signs.

The sign-enforcement activity of TxDOT is revenue-neutral – the licenses, fees, and fines only cover department costs. In addition, TxDOT has to reimburse the Office of the Attorney General for any legal enforcement.

At the April 2014 meeting, there were many questions from the audience regarding interpretation of the regulations. Knox explained that the regulations are very complex, and that “every sign is different.” TxDOT has only twelve inspectors to cover the 155,000

lane miles in Texas’ counties. The agency responds to complaints, but does not have the staff to be proactive in enforcement.

The complete survey process took the better part of a year. This is the first sign survey of a county in a state that has 254 counties. TxDOT hopes to carry out similar inventories in all counties eventually. The lack of any benchmark for signage in Texas and the staggering task of surveying the whole state might shed light on where department activity and legislative funds could be focused.

LWV-CA Survey of Billboards on Rural Roads in Comal County

Table 1 showing the survey of billboards conducted by LWV-CA Committee members in 2014.

Road	Distance (miles)	Structures	Total Faces	Faces Unleased	Deteriorated	Large/Huge	Small/Medium
SH 46	16.1	40	58	5	11	26	14
SH 306	30.8	95	137	37	17	38	57
FM 311	4.6	1	1	0	0	0	1
FM 1863	16.7	19	24	2	4	1	18
FM 2673	10.1	48	45	21	12	19	29
FM 2722	7.7	4	5	3	0	1	3
FM 3009	5.0	7	10	3	1	5	2
FM 3159	6.3	10	15	3	2	7	3
Totals	97.3	224	295	74	47	97	127

In July 2014, the committee members conducted a survey of non-electronic, off-premise, non-directional, outdoor advertising signs on eight rural roads covering 97.3 miles in the unincorporated areas of Comal County, see Table 1 above.

Data collected for each structure included: (1) the actual mile point from the beginning of the road, (2) comparative sign size: huge, large, medium, or small, (3) whether the sign face was actually leased or not, (4) the type of business advertised, and (5) the advertising company, when it was visible.

See Figure 2 on page 2 for a map showing the location of the 224 struc-

tures, with colored dots indicating a particular characteristic.

Of 295 total sign faces, 25% were unleased. Of the total of 224 outdoor advertising structures or posts, 21% were deteriorated.

On SH 46, developers, builders, and realtors constituted 45% of the leased advertising faces. On SH 306, this group comprised 35%; on FM 1863, it was 37%; on FM 2673, 33%; on FM 3009, 57%; and on FM 3159, 58%.

While not counted in the inventory, the directional and on-premise signs appeared to be as numerous as the off-

premise signs on all roads surveyed. The greatest proliferation of off-premise signs was on SH 306 approaching from I-35 and north of Canyon Lake and FM 2673 south of Canyon Lake.

The sign companies most often identified on the structures were SignAd (23), JGI (11), Clear Channel (10), Lamar (9), and Outdoor Media (9).

There are notable stretches of scenic views on FM 3159, FM 311, SH 46, and FM 1863. Another area highway with significant scenic views, but not included in the survey, is FM 32 from the Hays County line to the Blanco County line.

Benefits of Outdoor Advertising

Table 2: Rough Estimate of Tax Revenues for the County Provided by Outdoor Advertising.

Top Four Outdoor Advertisers 2014 Appraised Property Values Comal County		
Company	Total Appraised Value	Total Estimated Property Tax
Lamar Advertising of Austin	\$697,480	\$14,926.07
Clear Channel	\$692,500	\$14,819.50
Sign AD	\$80,640	\$ 1725.70
Outdoor Media	\$42,380	\$ 906.93

Introduction

The committee looked at the benefits to Comal County from outdoor advertising. This section will discuss benefits to private property owners, local businesses, and advertisers, who all receive financial remuneration from signs. The county itself receives property tax revenue from the signs. Signs also give information that benefits prospective consumers.

Tax Revenue for the County

While exact tax revenues are difficult to calculate for Comal County, the committee looked at property tax revenues generated by several companies: Clear Channel, Lamar, Sign AD, and Outdoor Media. Because the signs are in different areas and, as a consequence, have different tax rates, and because some properties were listed together as “various,” not individually, the study shows an average rate of 2.14% on the total properties’ appraised value. This gives an estimate of the amount of tax revenue generated, rather than an exact figure. See Table 2 above.

Informational Purposes

According to the Outdoor Advertising Association of America, “Out of Home” advertising “builds brands and drives transactions” in hard-to-reach areas that target the driving public.¹² Some examples include the following three areas:

Public Service

Part of the Highway Beautification

Act¹³ provides for off-premises signs that have public service announcements, like how to find help for gambling, drug, alcohol and mental health problems and Amber Alerts, all of which provide a clear benefit to the public.

Not for Profit

Those groups or associations that are nonprofits, like schools and churches, are required to have their signs permitted, but if the signs provide information on meeting times and places, the groups are not required to pay an annual permit fee, as long as they meet certain size restrictions. Advertising is also donated by sign companies to nonprofits and, according to the OAAA, the value of these public service ads is \$450 million a year nationally.¹⁴

Real Estate

Many of the signs in the county are used to advertise realtors, builders, or real estate for sale. This is information of benefit to visitors and those wishing to move to the area, which has traditionally not been easy to obtain in any other way. The benefits to local realtors can be significant. One anecdote provided to the committee stated a local realtor made a \$40,000 commission on a property sale directly related to the advertisement on a sign.

Revenue for the Landowner

One of the obvious benefits of signs is monies paid to the landowner. Each contract is negotiated independently and can simply be a lease of the land or

a sale of the land the sign stands on to the sign company. It seemed to be common that the leases were for long terms: 25 or even 50 years. One such lease the committee found was “perpetual.” For that lease the landowner was paid a one-time fee of \$70,000. Another landowner is currently being paid \$600/year to lease a sign that belongs to him and is located on his property. In Comal County land use is switching from agricultural to residential. Because of various circumstances like drought, some landowners need sign income to offset property taxes and other expenses.

Revenue for Local Businesses

The benefit to local realtors and builders has already been mentioned. There are, however, other types of local businesses like restaurants, shops, and hospitality that benefit from those who see the signs and patronize the businesses because of them. There is also a direct benefit to local sign owners, as mentioned above, and sign creators from the outdoor-advertising industry. The creation of a sign could mean \$400 to \$600 each for graphic artists and printers, and an estimated \$3700 to construction and erection companies, not to mention the potential income from maintaining the signs.

Conclusion

The vast majority of the benefits to the county from outdoor advertising signs comes from the income derived from the signs.

Negative Impacts of Outdoor Advertising

Loss of scenic views

Most advocates of restrictions on billboards complain that driving and living on country roads in Comal County is becoming less enjoyable as more outdoor advertising is restricting the views of the rolling hills, trees, limestone cliffs, and Texas skies that people expect to see. See Figures 3 and 4 on page 11 to see contrasting views.

Deteriorating and abandoned signs

Especially annoying to motorists are the signs that are not maintained or are abandoned. As noted in the survey conducted by LWV-CA, 21% of the off-premise advertising structures on Comal County rural roads were deteriorating, see Figure 5 on page 11.

Height of billboards

In June 2014, TxDOT proposed a rule change that would have allowed an increase in sign height from 42.5 feet to 65 feet. During the public comment process, TxDOT received responses from over 900 individuals and 15 organizations across Texas in protest, leading to TxDOT's withdrawal of the proposal in August 2014. Many comments stated that the 42.5 foot limit was already too high,¹⁵ see Figure 4 on page 11.

Impacts on property values

There is little doubt that for landowners who either own billboards or provide leases to outdoor advertising companies, property values increase

because of the income that signs provide. The Outdoor Advertising Association (OAAA) cites one such study of thousands of parcels in the county surrounding Tampa, Florida, showing that parcels with billboards are more valuable than neighboring parcels. Billboard leases also provide additional income for landowners, enhancing property values.¹⁶

For the property owners living near such signs, however, the opposite is true. According to a recent study conducted in Philadelphia, Pennsylvania, "Properties located within 500 feet of a billboard have a decreased real estate value [on average] of \$30,826."¹⁷ The committee was unable to find comparable data for Comal County.

Lighting on billboards at night

Light at night can cause special negative impacts, not only for motorists and residents, but also for the environment and for tourism.

Motorists' driving can be affected by glare and resulting reduced visibility when light from billboards is not shielded appropriately and directed downward. "Light clutter," too many sources of light in the viewing field, has been suspected of driver distraction, although not substantiated in studies.

Residents who live near lighted billboards complain of loss of their view of the night sky and of "light trespass," when light shines into their windows

or onto their property. There are also recent studies of the impact of blue light at night on human health, reducing the body's ability to produce antibodies.¹⁸

Impacts of lighted billboards on wildlife can be significant, since many species of animals and plants rely on the natural light of the night sky for navigation, mating, or pollination. It is believed that light disruptions are contributing to decreasing populations of sea turtles, fireflies, and some frog and moth species.¹⁹

"In Texas, the birthplace of the HBA, cities continue to curtail new billboards—while rural highways are filling up with empty signs looking for customers."

John Burnett, reporter for National Public Radio, 9-6-14

Loss of night sky views can also have an economic impact on tourism. As star parties gain popularity as tourist destinations, lack of dark skies can make a region less attractive to travelers.

For some residents, the negative impacts of billboards are reducing their enjoyment of living and driving in Comal County.

Electronic Billboards – The Wave of the Future

TxDOT defines an "electronic sign" as a sign, display or device that changes its message or copy by programmable electronic or mechanical processes. Off-premise electronic signs may receive permits on regulated highways if the sign is in a municipality and has a permit in that municipality. The message must be displayed for at least eight seconds, with no more than a two seconds in the transition time between displays.

Owners of electronic billboards (EBBs) are required to coordinate with local authorities to display emergency information like Amber Alerts or alerts concerning natural disasters.

An interesting consumer protection in the TxDOT regulation states, "If the department finds that an electronic sign causes glare or otherwise impairs the vision of the driver of a motor vehicle...the owner of the sign, within twelve hours of a request by the de-

partment, shall reduce the intensity of the sign to a level acceptable to the department."²⁰ Some advocacy groups find electronic signs to be particularly objectionable, citing possible safety issues related to glare and to driver distraction. A study for the National Highway Traffic Safety Administration in 2006 found that "glances totaling more than two seconds for any purpose increase near-crash/crash risk by at least two times that of normal, baseline driving."²¹ Activists say that driv-

ers are likely to gaze at EBBs for longer than two seconds, thereby increasing risk.

Scenic America is challenging the legality of the permitting of electronic billboards. The national Highway Beautification Act and TxDOT regulations state, “No sign may be permitted which contains, includes, or is illuminated by any flashing, intermittent, or moving light or lights.”²² In 2007 the Federal Highway Administration

(FHWA) issued a Guidance Memorandum ruling that commercial signs that change messages every four to ten seconds are not intermittent; thereby allowing electronic billboards to be permitted all over the U.S. In 2013 Scenic America filed suit to overturn this FSWA determination, maintaining that the agency was acting illegally.²³ That suit is ongoing.

Electronic billboards are likely the wave of the future. Dallas banned all

new billboards and, in an effort to encourage removal of existing billboards, offered an incentive. For every three old billboards taken down, one new digital billboard could be erected. As a result, activists predict, “Dallas will soon have 50 digital billboards, more than any other U.S. city except for Los Angeles.”²⁴ Electronic outdoor advertising will probably dominate future debates regarding highway signs.

Issues to Consider

Property Rights

Among the thornier issues regarding outdoor advertising, the one most often discussed is the property rights of landowners who own or lease billboards versus those of landowners who have to live with the negative impacts discussed above. During a LWV-CA public meeting, some property owners defended their right to receive an income from outdoor advertising, while other property owners talked about their right to unobstructed views of the Texas Hill Country and night skies.

In response to LWV-CA in regard to this issue, Dr. Donna Campbell, Texas Senator, District 25 wrote:

Property rights are paramount to a free society and must be protected. Since it is not possible to ‘own a view’ surrounding a property unless that property is

purchased by the adjacent property owner, regulating this in a uniform manner would be very difficult and likely weaken property rights...Essentially, it is up to the person purchasing land to determine if they want to live in an unregulated area.²⁵

Another aspect of property rights has to do with “light trespass.”

As mentioned earlier, see page 5, Bulverde has a specific prohibition against light trespass. In other municipalities without a lighting ordinance or in unincorporated areas, light trespass can be prosecuted under a nuisance lawsuit. In Texas, a private nuisance is “a condition that substantially interferes with the use and enjoyment of land by causing unreasonable discomfort or annoyance to persons of ordinary sensibili-

ties attempting to use and enjoy it.”²⁶

Economic Benefits vs. Negative Impacts

Ultimately, each community must decide whether the economic benefits of outdoor advertising outweigh the negative impacts. Residents of the unincorporated areas in the county who are impacted negatively by either billboards or their associated light will have to find other remedies. Several of those are included in this document. When examining the results of the LWV-CA survey of billboards, the fact that 25% of the faces on rural roads were unleased does bring into question whether there is sufficient advertising base in Comal County for the number of structures that have been built.

Alternatives to the Current Situation

Governmental Remedies

For residents who are dissatisfied with current outdoor advertising in Comal County, there are several governmental remedies to consider.

1. Seek better enforcement of current regulations. This publication has offered several examples of the difficulties of enforcement. The fact that only 62.6% of the signs in Comal County were legally permitted when TxDOT conducted its inventory exposes the gap between regulation and enforcement. TxDOT’s current staff is only large enough to process

licenses and permits and to respond to complaints. There is not even enough staff to monitor existing signs. It is up to residents to notice and report any signs that are abandoned or not permitted to TxDOT.

2. Strengthen current regulations. Some residents have concerns about excessive lighting on billboards or other specific concerns that could be addressed by new rules. For example, rules requiring downwardly directed or appropriately shielded lights can be found in city ordinances, like Bulverde’s Lighting Ordinance described

above. New rules for the Texas Transportation Code may be proposed to the Texas Transportation Commission.²⁷

3. Add more highways that are protected from new billboards. The Texas Transportation Code, Chapter 391 prohibits off-premises advertising signs on certain highways. Additional highways or sections of highways may be added to this list through legislative action. For example, the section of U.S. Highway 281 that runs through Comal County was included in this list during the 2005 Texas Legislative Session, thanks to Carter

Casteel, former Texas House Representative District 73. Further legislation adding new roads has died at the committee level in the Texas House of Representatives.

In an October 2007 interview, Casteel said, “Bandera County was the most effective in banning all new billboards along their scenic highways. The community presented a united front of politicians, community leaders, business people and citizens from all walks of life... Three state highways and eight farm-to-market roads were protected” during the 2005 legislative session.²⁸

Comal County Commissioners’ Court has passed multiple resolutions since 2007, requesting that the locally-elected state senator and representative introduce a bill adding specific highways in Comal County to the prohibited signs list. Senator Donna Campbell and Representative Doug Miller rejected the most recent county commissioners’ resolution in February 2013, citing private property rights of landowners.

4. **Seek legislative authority for counties to regulate billboards.** In Texas, only the state, through TxDOT, and incorporated municipalities have the authority to regulate outdoor advertising signs. In 2009 and 2011, bills were introduced to give counties the authority to prohibit the erection of off-premise signs along the roads in the unincorporated area of a county. Both bills failed.
5. **Seek the incorporation of communities like Sattler, Startzville, and Spring Branch.** Because incorporated municipalities have the authority to regulate billboards within their jurisdiction, some residents have proposed that smaller communities in the county consider becoming cities. There are many pros and cons to incorporation that go beyond the authority to regulate billboards, and that discussion is outside the scope of this study.

Non-Governmental Remedies

Given the political opposition to bill-

board legislation in Texas House committees, opposition in the Senate and the inability of communities to restrict billboards on scenic Texas highways since 2008, remedies to billboard pollution might lie outside the legislative area. There are three possible avenues to control billboard blight that are independent of government.

First, rural constituents can encourage outdoor advertising companies to voluntarily conform to the Outdoor Advertising Association of America Code of Industry Principles.²⁹ Those principles state that ethically responsible outdoor advertising involves “no advertising on scenic highways, only commercial areas.” In his first term, Texas Representative Doug Miller, District 73, found common ground with outdoor advertising leaders in crafting legislation to protect scenic roads. That particular effort ultimately failed. Finding those companies, working with them to establish some accommodation, then publicly rewarding them for their help might be a way to protect scenic roads in Comal County.

Communities can work with organizations formed to keep natural areas as pristine as possible. Organizations like Scenic Texas, whose mission is to “preserve and enhance the visual character of Texas,” offer incentives to communities to protect the visual environment. For instance, Scenic Texas offers annual awards to Scenic Cities from “recognized,” for generally responsible city ordinances and enforcement, to “platinum,” for practices like quality sign codes, historic preservation, lighting regulations and promotion of public art. Scenic Texas was also active in the 2014 TxDOT decision to reject a plan to raise the limit on billboard heights.

Citizens can form a stakeholders’ group of landowners, outdoor advertising industry representatives, citizens interested in preserving scenic vistas, and elected officials to preserve scenic roadways, while protecting economic and property rights. One local example of that kind of group is Guadalupe River Road Alliance formed by neighbors and concerned citizens. Members of GRRA banded together in 2010 to prevent TxDOT from completing a

proposed San Antonio Outer Loop that would have gone through prime River Road vistas. Because part of the proposed extension was in New Braunfels’ ETJ, the New Braunfels City Council had the authority to approve it or change it. City council passed a modified parkway plan that replaced the original outer loop proposal in 2012, and no further development has occurred with the project.

Change in the political history of the United States has often come from grass-root citizen activity. Limiting billboard activity in Comal County, especially on its scenic roads, might be best tackled by concerned, active citizens united for local causes, like saving parts of River Road or preserving scenic Texas.

OAAA Code of Industry Principles

In addition to adhering to external laws and regulations, the members of the Outdoor Advertising Association of America (OAAA) have adopted a set of voluntary industry principles. OAAA endorses this code and encourages its members to operate in conformance with these principles.

- Observe Highest Free Speech Standards
- Protect the Children
- Support Worthy Public Causes
- Provide an Effective, Attractive Medium for Advertisers
- Respect the Environment
- Provide Effective and Safe Digital Billboards
- Billboard Industry Self Regulation
- Protect Billboard Industry Rights

For further description of the OAAA principles, visit their website:

www.oaaa.org/About/OAAACodeofIndustryPrinciples.aspx



Fig. 3 Unobstructed view on a country road.



Fig. 4 Billboards obstruct views



Fig. 5 Deteriorating billboards are eyesores.

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For More Information

The federal Highway Beautification Act: <http://www.law.cornell.edu/uscode/text/23/131>

TxDOT Outdoor Advertising Sign regulations, forms, and fees: <http://www.txdot.gov/business/resources/outdoor-signs.html>

The Committee

Members of the LWV-CA Billboard Study Committee compiled the information for this publication through research and interviews. Members were: Coco Brennan, Joan Kemple, Bonnie Leitch, Jensie Madden (Chair), Jill Sondeen, and Carol Wilson.

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