

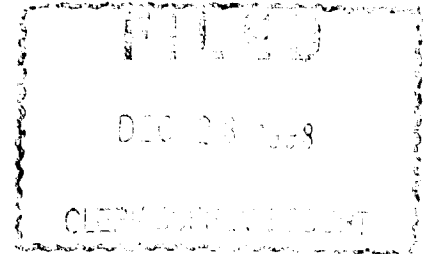
IN THE COURT OF APPEALS OF IOWA

No. 8-623 / 97-1862
Filed December 28, 1998

**VIVID INC., and WESTERN OUTDOOR
ADVERTISING CO.,**
Appellants,

v.

IOWA DEPARTMENT OF TRANSPORTATION,
Appellee.



Appeal from the Iowa District Court for Polk County, Joel D. Novak, Judge.

Vivid, Inc. and Western Outdoor Advertising Co. appeal from the district court's ruling for judicial review affirming the Iowa Department of Transportation's decision to cancel their permit for an outdoor advertising sign. **AFFIRMED.**

Danielle Dixon and Richard K. Updegraff of Brown, Winick, Graves, Gross, Baskerville and Schoenebaum, P.L.C., Des Moines, for appellants.

Thomas J. Miller, Attorney General, David A. Ferree, Special Assistant Attorney General, and Carolyn J. Olson, Assistant Attorney General, for appellee.

Heard by Sackett, P.J., and Huitink, Streit, Vogel, and Mahan, JJ.

STREIT, J.

Vivid, Inc. and Western Outdoor Advertising Co. appeal the district court's affirmance of the Iowa Department of Transportation's (DOT) revocation of their permit to maintain a billboard and the order to remove the billboard. Because we find the agency's decision supported by substantial evidence on the record, we affirm.

I. Background & Facts.

The billboard at issue is double-faced and located in an agriculturally-zoned area. Under the Junk Yard Beautification and Billboard Control Act, Iowa Code section 306C (1997), billboards cannot be located in agriculturally-zoned areas. However, under the act, billboards which existed prior to the act were grandfathered in as nonconforming billboards. A limit on such billboards is that they cannot be substantially modified or improved. Each billboard that was erected and maintained prior to the billboard act is required to have a permit. If a sign is double-faced, a permit is required for each side of the sign.

The original owner of the billboard was Electra Ad Company, Inc. Before the billboard law went into effect, Electra applied for a permit to maintain their billboard located in the agricultural area. However, instead of applying for two permits, one for each face of the billboard, they applied for one. The DOT determined the application was for the north face of the billboard and issued a permit for that face. The south face of the billboard was never issued a permit.

In 1976, after inspection, the DOT saw Electra had illuminated the south face of the sign. Electra and the DOT agreed that if the lights were removed the DOT would issue a permit for both faces of the sign. Although the lights were removed, the removal was never physically documented and a permit for the south face was not issued. The south face has remained in place without ever being issued a permit.

In the mid-1980's Electra added eight posts to the structure, altering the number of posts from thirteen to twenty-one. Vivid bought the billboard from Electra and added lighting to the north face. Neither Electra nor Vivid obtained a permit to make these changes to the billboard.

In August 1996, the DOT revoked Vivid's permit and ordered the billboard removed. Vivid challenged the revocation and removal order. The Iowa Department of Inspections and Appeals affirmed the decision. The ALJ's decision was upheld by the reviewing officer. Vivid filed a petition for judicial review. The district court affirmed the agency. Vivid appeals.

II. Standard of Review.

On appeal, we apply the standard of review set forth in Iowa Code section 17A.19 to the agency decision to determine if our conclusions are the same as those of the district court. *Bromeland v. Iowa Dep't of Transp.*, 562 N.W.2d 624, 625 (Iowa 1997). We will reverse an agency's findings if, after we review the record as a whole, we determine that substantial evidence does not support the agency findings. Iowa Code § 17A.19(8)(f); *Pointer v. Iowa Dep't of Transp.*, 546 N.W.2d 623, 625

(Iowa 1996). Evidence is substantial when a reasonable person could accept it as adequate to reach the same findings. *Reed v. Iowa Dep't of Transp.*, 478 N.W.2d 844, 846 (Iowa 1991). The ultimate question is not whether the evidence supports a different finding but whether the evidence supports the findings actually made. *Id.* “It is well-established the licensee bears the burden of proof in a license revocation proceeding to show compliance with the implied consent law and the peace officer's failure to satisfy the procedural requirements.” *Gaskey v. Iowa Dep't of Transp.*, 537 N.W.2d 695, 697 (Iowa 1995).

III. The Agency's Decision to Revoke Vivid's Permit.

It is undisputed that the billboard in question is subject to the provisions of the “Junkyard Beautification and Billboard Control Act” outlined in the Iowa Code section 306C and the administrative regulations under the act.

Iowa Administrative Code section 117.6(5) provides: “[A] new permit is required from the department prior to the reconstruction or modification of an advertising device subject to permit provisions of this rule.” Section 117.6(5)(c) provides: “Reconstruction or modification of an advertising device prior to the issuance of the required permit is grounds for revocation of any permit that has been issued for the advertising device and removal of the advertising part.”

Vivid argues they did not modify the billboard because they did not alter the advertising message area on the billboard, only the support structures and lighting. They argue this was not a substantial change.

The Iowa Administrative Code defines “modification” as “any addition to or any substantial change in the dimensions, lighting, structure, or advertising face except as incidental to customary maintenance of an advertising device.” The modification to the support structure by the addition of eight poles and illuminating the sign was a substantial change, rather than incidental to the maintenance of the billboard. This is a reasonable interpretation supported by substantial evidence on the record. *See Reed*, 478 N.W.2d at 846. Because Vivid was required to obtain a permit before modifying the billboard, not doing so subjected them to revocation of their permit. The district court is affirmed on this issue.

Vivid’s argument corrective action should be taken rather than revocation and removal is not supported by the law of Iowa. Vivid cites the Missouri case of *Boyce Industries, Inc. v. Missouri Highway & Transp. Commiss.*, 693 S.W.2d 293 (Mo. App. 1985) in support of its argument. The Missouri court held that the agency’s decision not to allow corrective action was unreasonable, arbitrary, and capricious. We take note of this case, however, the punishment contemplated and imposed by the agency in the case at hand was not unreasonable but rather supported by Iowa statutory law and substantial evidence on the record. The circumstances of this case were distinct from *Boyce*. The Iowa Administrative Code clearly states modification of a billboard without obtaining the DOT’s approval is grounds for revocation. We find no reason to alter the consequences provided for in this provision of the administrative code.

AFFIRMED.