

## **BILLBOARD QUESTIONS RECEIVED SINCE 12/12/16**

### **Background**

- Q. Why must the City permit any billboards?
- A. Prior to Johns Creek becoming a city, several billboard companies applied to Fulton County for 75 billboard sign permits. Fulton County denied the applications and the billboard companies sued. Johns Creek joined the lawsuit after it became a city. The lawsuit was resolved by the Georgia Supreme Court with the finding that the Fulton County sign ordinance was unconstitutional and that the billboard companies were entitled to erect up to 75 billboards, including 31 billboards at 27 locations within Johns Creek. In order to mitigate the impact of higher number of billboards, billboards, Johns Creek negotiated an agreement with the billboard companies to erect only 10 billboards in 10 locations. The Georgia Supreme Court is the final authority on the matter and Johns Creek could not appeal its ruling to any other court. Therefore, having exhausted its appeal options, Johns Creek has no other choice but to adhere to the Georgia Supreme Court's ruling allowing the billboards. In compliance with this negotiated agreement, Johns Creek has issued building permits for seven of the 10 billboards to be erected within the city limits of Johns Creek.
- Q. How many billboards were agreed to in the settlement agreement?
- A. Through lengthy discussions with the billboard companies, the companies agreed to build 10 billboards (nine LED and one static). Please read the [settlement agreement](#) for more details.

### **Supreme Court Decision**

- Q. Many communities around the nation have successfully kept billboards away. Why is it that the billboards have been able to fight this?
- A. In this case, the billboard companies filed applications with Fulton County prior to Johns Creek becoming a city. Because Fulton County's Sign Ordinance was unconstitutional at the time the applications were filed, the billboard companies were allowed to construct signs at the locations identified in the applications. Since Johns Creek's sign ordinance was not in effect at the time the applications were filed, it could not be applied to stop the billboards.
- Q. How has the Georgia Supreme Court deemed it was unconstitutional for Fulton County to deny the billboard companies' requests to erect the billboards? What "constitutional right" is being violated?
- A. The First Amendment protects commercial speech unless it involves illegal conduct or is misleading or fraudulent. To ban any type of commercial speech, the government must have a substantial reason for doing so. Banning all signs, including all commercial signs, and then deciding on a case-by-case basis which ones will be permitted is the antithesis of the narrow tailoring that is required under the First Amendment, even in the context of commercial speech. Because the regulatory approach taken by Fulton County provides insufficient protection for protected speech, both commercial and otherwise, the Georgia Supreme Court concluded that the broad sweep and basic structure of the Fulton County Sign Ordinance, whereby all signs are presumed to be illegal and are then permitted only on a case-by-case determination, violates the First Amendment.

- Q. What other avenues are available to deal with the billboards?
- A. With the definitive decision of the Georgia Supreme Court which gave the billboard companies vested rights to construct billboards in Johns Creek and the Settlement Agreement, there does not appear to be any remaining reasonable avenues to deal with the billboards that have not already been explored.
- Q. Why did Johns Creek settle with the billboard companies?
- A. Following the court's 2011 ruling, the City had no higher appeal and was left with three options:
- 1) Do nothing and let the billboard companies erect all the billboards they were legally entitled to;
  - 2) Continue to fight an already litigated battle and face the certainty of penalties and damages — money better spent on roads, parks and other services;
  - 3) Try to gain concessions from the billboard companies on number, location, height, size, type, content, and illumination. The City opted for discussion. Because of the settlement, we ended up with 10 signs rather than more than 25.

### **Billboard Locations and Designs**

- Q. How were the locations of the billboards determined?
- A. The city did its best to spread the 10 sites around the outer edges of the City as much as possible.
- Q. Is it possible to find out the exact addresses of the remaining potential properties? Especially those on State Bridge between Kimball and Morton?
- A. There are three remaining billboards that may be constructed in five potential locations. The settlement agreement dictates how many billboards are permitted out of each of the nodes in the city and specific addresses are listed under each node:
- **West side of State Bridge Road from Kimball Bridge to Morton**
    - 11195 State Bridge Road – Goddard’s School
    - 11180 State Bridge Road – Northside Urgent Care
    - 10700 State Bridge Road – Penn Hodge Center Station
  - **East side of State Bridge Road from Kimball Bridge to Morton**
    - 10645 State Bridge Road – Sam’s Market Shell Station
  - **North side of State Bridge Road near Ga. 141/Medlock Bridge Road**
    - 5805 State Bridge Road – Medlock Corners
    - 5980 State Bridge Road – Old Dunkin Donuts site
    - 5970 State Bridge Road – site east of old Dunkin Donuts’ site
    - 5725 State Bridge Road – Upscale/resale Center
    - 5710 State Bridge Road – The Pub House
  - **West side of Medlock Bridge Road at Abbotts Bridge Rd.**
    - 10900 Medlock Bridge Road – Medlock Promenade

- 10960 Medlock Bridge Road – Godwin BMW Repair
- 10845 Medlock Bridge Road – Longhorn's
- 10945 Medlock Bridge Road – Valero Gas Station
- 10965 Medlock Bridge Road – BP Gas Station
- **McGinnis Ferry Road**
  - 11450 McGinnis Ferry Road – JC Flex Site
  - 6650 McGinnis Ferry Road – Vacant Site

Q. If the billboard company can erect billboards on a total of 10 sites, would that mean that they, and not the city, can choose any 10 from the 31?

A. No, they are restricted to a certain number of billboards at each of the ten locations. See answer above for exact locations still available.

Q. How were each of the locations chosen? Why so many on the north side of Johns Creek but not on the southern end?

A. Through negotiations, the City sought to push the billboards to the fringes of the City and away from residences. Billboard companies typically seek to site the billboards where they receive maximum exposure to traffic. Due to the geography of the City, most of the major roads are located central (Medlock Bridge, State Bridge, Jones Bridge, McGinnis Ferry) to the city with Holcomb Bridge Road being the only primary arterial in the southern portion of the city. Unfortunately, although the final locations are located along these arterials, the predominant residential nature of the City made it impossible to fully negotiate the billboards away from residential areas.

Q. At the intersection of Abbotts Bridge and Jones Br Rd (across from CVS) where the second billboard was installed across the street next to the Shell gas station there is a static billboard that was there before the new one. Is that some kind of a violation?

A. That billboard pre-existed the city and is considered to be a legal non-conforming structure. Although it does not meet the city's current regulations, it is allowed to remain due to grandfathered status.

Q. Why didn't Johns Creek approve how the billboards would look?

A. The city attempted to reduce as much of the visual impacts as possible, including requiring stacked stone or brick bases on some of the poles and attempting to lower the height. Unfortunately, the court ruling left the city without significant leverage to achieve any further improvements.

Q. Can you please ask City staff to produce a list of owners (and their contact information) of the properties that are still potential billboard sites, and make the list available to city residents?

A. Property ownership information is public record and readily available through the Fulton County Tax Commissioner's website. To compile a specific list of the remaining potential property owners would likely place the city under a significant amount of legal liability in violating the settlement agreement and interfering with the court ruling.

## Negotiations

- Q. Why did the city originally engage in discussions with the billboard companies?
- A. Since the 2011 Georgia Supreme Court ruling which approved 75 billboards to be built north of I-285, the cities of Johns Creek, Alpharetta, Milton and Sandy Springs began separate discussions with the billboard companies on how many, what kind, and where they would be located within their own jurisdictions. Each city completed their settlement agreements. In each case, the billboard companies agreed to build fewer billboards. It was in the best interest of the community for the City to conduct these discussions and come to an agreement with the billboard companies as the risk of pursuing other options was simply unacceptable.
- Q. How can I obtain the details (i.e. documents) on the Johns Creek - billboard company negotiations?
- A. By law negotiations leading up to the Settlement Agreement are confidential and not subject to public disclosure. Not only is this legal restriction necessary to encourage open and honest communication in settlement negotiations, it also prevents the revelation of information that could jeopardize the City's ability to defend future billboard related litigation. Given the City has recently received notice of several claims against it related to billboards, it would not be in the City's best interest to disclose the City's evaluation and strategy concerning the billboard issue to the public where it could be used against the City in the threatened litigation. Moreover, the City's insurance company could deny coverage to the City for future billboard litigation if it fails to keep this information confidential.
- Q. Why wasn't an expert brought in to help in the settlement with the billboard company?
- A. Attorneys, who are negotiators and experts in law, were used throughout the negotiations.
- Q. Why did the City did not include an indemnification in the agreement, and prohibit billboards in the worse intersection within the City?
- A. Every driver is expected to exercise reasonable care in the operation of a motor vehicle which includes the duty to avoid natural and usual distractions. A billboard company which is operating a sign in a usual manner in compliance with applicable regulations would not likely be liable for an accident caused by a distracted driver. Regarding the number of billboards, applications were filed for a total of 31 billboards in 27 potential locations.
- Q. Why did the city not negotiate for static billboards? A static billboard would have been a little more agreeable, you could see it, you could come back and see it again another day, but the fact that these are continually rotating and flashing and asking and calling you to do something is disturbing.
- A. This discussion was part of the negotiations; however, the LED allowed a reduction in the number of billboards.

- Q. What studies do you reference in your FAQ? Who funded the studies? Common sense says that LED billboards are much more distracting, with the colors at night, the changing images, the intensity of the colors. Since billboard companies never cared about LED lights at the start, why did JC push them?
- A. Please see the Department of Transportation [report regarding billboards](#). LED lights were not disallowed during the court rulings nor were they pushed for.
- Q. Why does the city act like the settlement is the end-all of what Johns Creek can do? Reopen the discussions and get more limitations from Clear Channel with better negotiators.
- A. The Georgia Supreme Court found that the billboard companies had vested rights and were entitled to locate the billboards in Johns Creek even without the issuance of a permit. As the Georgia Supreme Court was the final decision maker on the matter, the billboard companies had little incentive then and have little incentive now to negotiate. The City made every effort in light of its limited negotiating power to reach a settlement agreement that was in the best interest of the City. If the City now acts contrary to the Court's decision and contrary to the provisions of the settlement agreement, it would be at risk of being in contempt of court and in violation of the settlement agreement which could result in monetary fines, paying civil damages to the billboard companies and paying the billboard companies' legal fees and expenses. Attorneys, who are negotiators, were a part of the process throughout its entirety.
- Q. Who in the city enforces content violations? Have any violations been cited to this point?
- A. Code Enforcement monitors the content of the signs to ensure compliance with the regulations concerning timing, motion, video streaming, flashing lights, sound, and holographic or 3-D imaging. Code Enforcement would also investigate complaints about content. Under the Settlement Agreement the following types of advertisings are prohibited: adult entertainment establishments, strip clubs, massage parlors, adult video, adult book stores or similar businesses, abortion services, any activity or product that is illegal under Georgia or federal law, any material that is obscene as defined by O.C.G.A. Section 16-20-80, pawn shops, hookah bars, payday loan businesses and advertising that promotes terrorist activities or groups. Thus far, none of the messages have violated allowable content standards. Under the Settlement Agreement the following types of advertisings are prohibited: adult entertainment establishments, strip clubs, massage parlors, adult video, adult book stores or similar businesses, abortion services, any activity or product that is illegal under Georgia or federal law, any material that is obscene as defined by O.C.G.A. Section 16-20-80, pawn shops, hookah bars, payday loan businesses and advertising that promotes terrorist activities or groups.

- Q. Why are the billboards so tall? Why so big? I can see the billboard at Jones Br/State Bridge Roads from State Bridge near Kimball Bridge Road. Why couldn't there be restrictions on height?
- A. Each location has height restrictions ranging between 60 – 95 ft., depending on the sight lines and topography. Please see Exhibit A of the [Settlement Agreement for details](#). Sign ordinances have limitations on size and height.
- Q. Did the JC negotiators consider the height or size in the settlement?
- A. Yes. The City attempted to minimize the sign height as much as possible. While the City's sign ordinance contains height and size restrictions, the court ruled that the City's sign ordinance would not apply to these signs which were applied for with Fulton County before Johns Creek became a city.
- Q. Why do the LED images change so frequently? That's very distracting for drivers. It seems some change very quickly. Is there a minimum time limit? Are all ads held to that standard? Has anyone been cited for exceeding any minimum?
- A. State law mandates that advertisements on billboards shall remain fixed for at least 10 seconds. Code Enforcement has confirmed that the billboards are following this standard.
- Q. Children passengers or student drivers are too young to be inundated by drinking ads and adult content matter. JC went out of their way to get rid of the adult store when it was created. Why is this any different? Can adult book and movie stores advertise on the billboards? Why not start a campaign at least for local advertisers to avoid advertising with the billboards, as good citizens?
- A. Under the Settlement Agreement the following types of advertisings are prohibited: adult entertainment establishments, strip clubs, massage parlors, adult video, adult book stores or similar businesses, abortion services, any activity or product that is illegal under Georgia or federal law, any material that is obscene as defined by O.C.G.A. Section 16-20-80, pawn shops, hookah bars, payday loan businesses and advertising that promotes terrorist activities or groups. The City may not start a campaign to discourage advertising with billboards as such action would be against the ruling of the Georgia Supreme Court and the terms of the Settlement Agreement and put the City at risk of being in contempt of court and in violation of the settlement agreement which could result in monetary fines, paying civil damages to the billboard companies and paying the billboard companies' legal fees and expenses.
- Q. Why didn't JC use professional negotiators instead of having two elected officials taking the lead?
- A. Attorneys, who are professional negotiators, were a part of the process throughout its entirety.
- Q. Why did the city originally engage in discussions with the billboard companies?
- A. Since the 2011 Georgia Supreme Court ruling which approved 75 billboards to be built north of I-285, the cities of Johns Creek, Alpharetta, Milton and Sandy Springs began separate discussions with the billboard companies on how many,

what kind, and where they would be located within their own jurisdictions. Each city completed their settlement agreements. In each case, the billboard companies agreed to build fewer billboards. It was in the best interest of the community for the City to conduct these discussions and come to an agreement with the billboard companies as the risk of pursuing other options was simply unacceptable.

Q. Why can't the city stop this or fight these companies harder?

A. The City has been ordered by the Georgia Supreme Court to allow the construction of billboards. Because the ruling applied to a local zoning regulation (Fulton County's sign ordinance), it cannot be appealed to a higher court. The court looked at the case through the eyes of the 1st Amendment, which protects commercial freedom of speech. Historically, in cases across the U.S., it's very, very difficult to obtain a favorable ruling when entering litigation against a billboard company. We have exhausted all legal efforts to fight the erection of the billboards, and believe strongly that the best approach is to work with the companies to comply with the court ruling. Several teams of attorneys and experts have reviewed the court ruling and determined that challenging it is both futile and potentially very expensive.

Q. What did the other cities do to implement the court's ruling?

A. The Georgia Supreme Court ruling was implemented in the other cities with settlements similar to the one adopted by Johns Creek on October 20, 2014. See [Comparison Chart](#).

## Executive Privilege

Q. Can you remove the executive privilege from the billboard negotiations so the residents can get the details of the settlement?

A. The provisions of the law allowing settlement negotiations to remain confidential are there to ensure that the City is not placed at a financial or legal disadvantage. Elected officials owe a fiduciary duty to the City and those served by it to act in the best interests of the City as a whole and not any particular individual interest. Given the City has recently received notice of several claims against it related to billboards, it would not be in the City's best interest to disclose the City's evaluation and strategy concerning the billboard issue to the public where it could be used against the City in the threatened litigation. Moreover, the City's insurance company could deny coverage to the City for future billboard litigation if it fails to keep this information confidential.

## Liability

Q. Who would be liable if a suit is filed for a billboard distraction triggered accident?

A. The distracted driver is the most likely person to be liable for an accident. Every driver is expected to exercise reasonable care in the operation of a motor vehicle which includes the duty to avoid natural and usual distractions. A billboard company which is operating a sign in a usual manner in compliance with applicable regulations would not likely be liable for an accident caused by a distracted driver.

Q. Is our council sharing the information and talking with the schools directly about the billboards? They should be fully informed of anything that could affect drivers and distracting billboards certainly can.

A. The City Council has not reached out to the schools about billboards.

Q. Does LED Billboard Lighting affect our kids? Does it create a safety issue? Can public safety be considered with the LED lighting and flipping?

A. Much like cell phone use while operating a motor vehicle, there are a number of actions any driver might take that will distract them from safe driving. As technology continues to advance so will the need to remind drivers to remain focused on safely driving a motor vehicle. The Georgia Supreme Court ruled that is unconstitutional to ban billboards. The City Council is opposed to having billboards in Johns Creek but understands that it must comply with the law. State law directs that advertisements on billboards shall remain fixed for at least 10 seconds before flipping.

Q. Is Clear Channel collecting metadata and how is this data tracked, is it on all billboards and was this noted on the billboard applications?

A. Clear Channel has represented that no metadata is being collected by the billboards in Johns Creek. Metadata collection was not noted on any billboard application nor on any building permit application.

Q. If one of these billboards is visible to a neighborhood with HOA anti-solicitation rules could they sue?

A. Since the billboards are not physically located on property subject to any such HOA covenants, such a lawsuit would not likely be successful.

## **Tax Revenue**

Q. Will the City of Johns Creek receive tax revenues from the owners of the property leasing the land for these billboards? Also, is it in city government's purview to pass actions to make a Blight Tax on the billboard companies?

A. The city receives ad valorem taxes on the property (land) regardless of whether there are billboards; however, state law severely limits taxation on actual billboards and any revenue received is minimal. The blight tax does not apply.

## **Cemetery**

Q. Define the property lines of a cemetery; does it start at the first gravesite?

A. Since GDOT is the governing authority responsible for issuing a permit which meets the state law requirement that a billboard be located 500 feet from a cemetery, it is GDOT's obligation to determine the boundaries of the subject cemetery. According to Georgia law regarding abandoned cemeteries, a cemetery is defined as any land dedicated and used for interment of human remains. GDOT utilized a qualified archeologist to examine the site and define the limits of the cemetery. According to the archeologist, the cemetery is made up of (1) the area containing graves and (2) the area historically used for burial purposes. Using this criteria the archeologist found that the limit of the cemetery was a rectangle in the northeastern corner of the church property.

Q. Where was the city when GDOT changed the measurement/definition of cemetery boundary of 500 feet?

- A. GDOT did not change the definition of the 500 foot distance requirement from a billboard to a cemetery. A Georgia State archeologist employed by GDOT reviewed the location of the Church's cemetery with regards to the revised location of the proposed Billboard on the Fairway property and determined that the billboard location was greater than the 500 foot distance separation from the cemetery as required by state law. Johns Creek had no authority to interpret and enforce this state law, and has no jurisdiction to make a permitting decision reserved solely for GDOT.
- Q. Initially that request for the billboard was denied based on it being too close to that cemetery and then GDOT came out and redefined the cemetery and I find that hard to understand. How is the cemetery defined?
- A. The cemetery distance restriction is governed by GDOT and is defined by their processes. GDOT utilized an archeologist to examine the site and define the limits of the cemetery as described above. Simply put, the archeologist determined that the boundaries of the church property are not the boundaries of the cemetery. Similarly the boundaries of Johns Creek High School football field, are not the same as the boundaries of the Johns Creek High School property.
- Q. Why didn't the board dispute the measurement at the cemetery by GDOT after the initial denial ruling that the billboard was too close to the cemetery?
- A. Johns Creek had no authority to interpret and enforce this state law, and has no jurisdiction to make a permitting decision reserved solely for GDOT. GDOT did not change the definition of the 500 foot distance requirement from a billboard to a cemetery. A Georgia State archeologist employed by GDOT reviewed the location of the Church's cemetery with regards to the revised location of the proposed Billboard on the Fairway property and determined that the revised billboard location was greater than the 500 foot distance separation from the cemetery as required by state law.

### **Zoning and Operations**

- Q. Did the Dry Cleaners owner violate any laws when he subdivided his property and sold it to the billboard company? Is this allowed?
- A. The City has not received an application for subdivision from the Dry Cleaner owner. To properly subdivide a piece of land in the City of Johns Creek each new parcel would be required to have a minimum of 35 feet of frontage on a street and the subdivision of land would need to comply with all of the City's subdivision development regulations. The area on which the billboard is located would not meet those requirements.
- Q. If the billboard is to remain, can you possibly have them turned off between the hours of 10 p.m. and 7 a.m. and if that won't happen can they be severely dimmed during those hours?
- A. As this is not part of the settlement agreement, the City cannot require the billboards to be turned off between the hours of 10 p.m. and 7 a.m. However, nothing prevents an interested citizen or citizen group to make such a request to the billboard companies.
- Q. Regarding "Pre-existing zoning conditions," why is they cannot be enforced?
- A. The Georgia Supreme Court ruling indicated that there were no valid ordinances in place at the time of application that prevented the construction of the billboards. In the absence of these ordinances, any conditions affecting the billboards would have the effect of being void.

- Q. Why does the settlement agreement ignore existing zoning conditions prohibiting billboards?
- A. The Court ruling indicated that there were no regulations in place at the time of application that prevented the construction of the billboards. In the absence of these regulations, any conditions affecting the billboards would have the effect of being void.
- Q. I know some towns have been able to restrict billboards simply by passing laws about the height of signs. This is not directly at billboards but helps maintain the integrity and reduce commercialism that tall signs such as billboards present. Why can't we do the same?
- A. Our Sign Ordinance does include height restrictions. See the [Sign Ordinance](#). However, the City cannot retroactively apply new height restrictions to these old applications made prior to the City's existence.
- Q. What are you going to do to improve the billboard settlement going forward?
- A. We are obligated to follow the law regardless of how we feel about the billboards. The settlement was the best we could do considering the ruling of the Supreme Court and what the billboard companies were entitled to.
- Q. Why did Johns Creek allow the trees on Medlock Bridge near the billboard to be cut down?
- A. The Settlement Agreement allows the Outdoor Advertising Company the right to remove and prune trees as they see necessary. The Outdoor Advertising Company is replacing the trees with new trees that will not grow as high as the ones that were cut down to fit better under the power lines.
- Q. How much money do the billboard companies make for each sign?
- A. The city does not know because it is not involved in the business relations between the billboard companies and their advertisers.
- Q. How much are the billboard companies paying property owners for permission to put signs on their property?
- A. The city does not know because it is not involved in the business relations between the billboard companies and any property owners.
- Q. Can the signs advertise in a foreign language? If so, how will the city know if there is a content violation?
- A. Yes. Georgia law prohibits cities from restricting sign language to English. The City will endeavor to translate and follow-up with the billboard companies regarding any content violation.