SALT LAKE CITY LAND USE APPEALS HEARING DECISION
Case No. BLD2018-0687 and PLNAPP2019-00727
APPELLANT: YESCO OUTDOOR MEDIA

On July 18th, 2019, Salt Lake City, through its Zoning Administrator, denied a request by YESCO Outdoor Media to move a billboard from 643 South, 400 West to 342 West 1300 South. YESCO Appeals that decision on the grounds that the Zoning Administrator misconstrued the law governing the right to move billboards in the City. Salt Lake City asserts that the Land Use Appeals Hearing Officer is without jurisdiction to hear YESCO's appeal and that if jurisdiction exists, the Zoning Administrator should be affirmed.

Based on the evidence in the record including the Staff Report, documents submitted by YESCO and the Salt Lake City Attorney's Office, and information gathered at the public hearing of this matter on October 10, 2019, the Appeal is granted.

I. THE HEARING OFFICER HAS JURISDICTION TO DECIDE THIS CASE.

Salt Lake City asserts that the hearing officer is without jurisdiction to hear this matter because the issues on appeal require only an interpretation of State law, which is outside the scope of the Hearing Officer's Authority.

Billboards are governed by both State Law and Salt Lake City ordinance. State law has very specific guidelines about where and when a billboard can be moved and Salt Lake City has provided its own set of rules about the zoning and placement of billboards in particular neighborhoods. And the City incorporates State law into the code asserting that "except as otherwise provided herein, existing billboards shall not be relocated except as mandated by the requirements of Utah State law."

A request to move a billboard takes the form of a building permit application which is reviewed by the City's zoning administrator. In this case, the request to move the Billboard was declined by the City; on the grounds that a damaged and abandoned Billboard could be rebuilt but not moved based on the Zoning Administrator's interpretation of state law.

Utah Code provides that an appeal authority shall:

"(a) determine the correctness of the land use authority's interpretation and application of the plain meaning of the land use regulations; and

(b) interpret and apply and land use regulation to favor a land use application unless the land use regulation plainly restricts the land use application."

Further, State law provides, "Only a decision in which a land use authority has applied a land use regulation to a particular land use application, person, or parcel may be appealed to an appeal authority."

Finally, Utah law defines land use regulation as "a legislative decision enacted by ordinance, law, code, map, resolution, specification, fee, or rule that governs the use or development of land." Utah Code Ann. 10-9a-103(31)(a). And a land use decision means an administrative decision of a land use authority or appeal authority regarding a land use permit, land use application or the enforcement of a land use regulation, land use permit or development agreement. *Id.*at p. 29.

Salt Lake City ordinance on the other hand that provides "the Appeals Hearing Officer shall hear and decide appeals alleging an error in any administrative decision made by the Zoning Administrator or the Administrative Hearing Officer in the administration or enforcement of this title, as well as administrative decisions of the Planning Commission."

Salt Lake City argues the reference to "this title," means that the Hearing Officer can interpret City Code but not State law. Given the process, however, where the zoning administrator interprets State law to reach a decision and the statutory scheme provides for appeal to the Hearing Officer, the City's view is inconsistent within its own process. Land use regulations are defined broadly; to include ordinances, law and code "that govern the use or development of land." And the law provides that any decision based on a land use regulation can be appealed to the Appeal Authority. Based on the foregoing, I find that the Appeals Authority does have jurisdiction over this appeal. This determination allows appeals to follow the steps presumed by the ordinance and recognizes that the governance of billboards in Salt Lake City involves a merger of State law and municipal code. Where the zoning administrator makes a decision based on land use regulation governing the use or development of property, the parties are entitled to the statutory presumption and process provided by an appeal to the authority created for that purpose.

THE APPLICATION TO MOVE THE BILLBOARD SHOULD HAVE BEEN APPROVED.

Salt Lake City denied the application to move the billboard on the basis that it had been abandoned and that the State law allowing an active billboard to move within allowed parameters does not apply in such circumstances. YESCO, on the other hand, asserts that it made multiple efforts to move the billboard within the City's rules and that the law intended that billboards be allowed to move, even if they were damaged and not functioning at the time of the request. It is undisputed by the parties that the billboard in question was damaged in a windstorm in June 2017 and that now, only a pole remains.

Utah Code Ann. provides that a billboard owner may "rebuild, maintain, repair, or restore a billboard structure that is damaged by casualty, an act of God or vandalism; . . . [or] relocate a billboard into any commercial, industrial or manufacturing zone within the municipality's boundaries" if the new location meets certain conditions, none of which are at issue here.[1]

[1] Salt Lake City initially disputed whether the new location met the distance requirements of the Statute but at the hearing indicated that it did not dispute YESCO's measurements showing compliance.

Salt Lake City argues that this language means YESCO's pole can be rebuilt but not moved, because it no longer qualifies as a billboard under the statute. Utah Code Ann. §10-9a-103(5) defines billboard as "a freestanding ground sign located on industrial, commercial or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located."

There is no question that the YESCO pole was a billboard in May 2017 prior to the wind damage. According to Salt Lake City's interpretation of the ordinance, the billboard could have been moved the day before it was destroyed but once it was damaged; YESCO could only do repairs. This would require YESCO to rebuild the sign before making use of its statutory right to move the sign within the law's parameters. This makes no economic, practical or logical sense. Nor is it required by any language in the statute. Despite the parties' various arguments about the word "or," nothing in the structure of the statute suggests that damage to a billboard would have the effect of preventing its owners from taking advantage of the rights available to undamaged structures. This is consistent with the State law requirement to interpret land use regulations to favor land use applications.

The more difficult question is whether YESCO abandoned the sign and therefore no longer has the right to move it. According to Utah Code Ann. §10-9a-513(3) , a municipality can remove a billboard if it has been abandoned for 12 months and the situation has not been remedied within 180 days of notice to do so. Salt Lake City presented evidence that the billboard sat un-repaired and not moved for close to 18 months. YESCO presented evidence that during that period it made repeated efforts to find a satisfactory location to move the billboard and submitted multiple building applications during that period to do so.

YESCO also presented a statement from the State Department of Transportation (which has some additional authority over billboards fronting freeways) asserting that the sign was not abandoned because of the active permit request. Furthermore, on July 18, 2018, UDOT communicated to YESCO that it had 365 days until the billboard would be considered abandoned.

In this case, YESCO submitted an application to move the billboard on December 11, 2017. The City indicated during the hearing that it considers that application open although the facts also indicate that YESCO no longer has a lease that would allow it to rebuild the billboard. Neither YESCO or the City has pursued action on that application.

Since that time YESCO applied to move the billboard; first to 643 West 800 South ("the Fear Factory location") on July 11, 2018 and again, by amendment, on June 24, 2019 to 342 West 1300 South. It is the 2019 application that is the subject of this appeal. Salt Lake City treated both of these requests as being under the same Building Permit BLD2018-06967. YESCO characterized the change from the Fear Factory location to the 1300 South location as an amendment and the permit number remained the same. Salt Lake City did not dispute the amendment characterization.

On July 18, 2019 UDOT, by email, gave YESCO 365 days to act on the billboard or consider it abandoned. This is more than 365 days since the structure was damaged. But given

the passage of time, UDOT did not have the statutory authority to give YESCO an additional 365 days but YESCO was entitled to 180 days following notice, which would have been until January 14, 2019. Nonetheless, YESCO filed the application to move the billboard on July 11, 2018; actually a week before the UDOT notice; and so acted within the timeline to have pending action. And because both YESCO and Salt Lake City treated the request to change the address from 800 South to 1300 South as an amendment, that pending application ties back to the July 2018 date. Thus YESCO did have a pending application to move the billboard at the time of the Zoning Administrator's decision, thus preventing a finding of abandonment.

Therefore, because UDOT had the authority to allow YESCO additional time to act on the billboard and YESCO acted within that time to make a building application, the billboard cannot be considered abandoned.

Based on the foregoing, I find that the decision of the Zoning Administrator should be reversed and Salt Lake City should process the pending permit pursuant to its rules and regulations.

DATED this 30th day of October, 2019

/Mary J. Woodhead/
MARY J. WOODHEAD
Appeals Hearing Officer