

Salt Lake City Land Use Appeals Hearing Officer
Appeal of Administrative Decision
CBS Outdoor Advertising Appeal – 738 West South Temple
Denial of Billboard Application
PLNAPP2015-00974
January 15, 2016

This is an appeal of a decision by the City Administration denying an application to erect a billboard at approximately 738 West South Temple. This appeal was filed concurrently with a second appeal, involving the approval of a billboard at approximately 726 West South Temple and identified as PLNAPP2015-00973. While the decisions are separate, it would be important to review both decisions to understand the context of each of them.

The decision to deny the permit and to not allow a billboard at 738 West South Temple is *sustained*. The appeal of that decision is *denied*.

THE RECORD

A public hearing on this matter was held before Craig M. Call, Land Use Appeals Hearing Officer for Salt Lake City on December 16, 2015. At the conclusion of that hearing, it was continued until January 14, 2016. Leslie Van Frank and Brad Strassberg appeared on behalf of the Appellant, CBS Outdoor. Casey Gray also spoke for position of the Appellant. Samantha Slark and Katherine Lewis appeared on behalf of the City. The Applicant for the billboard permit, Corner Property LLC, was represented by Jon Rogers. Ben Rogers and Edward Rogers also spoke on behalf of Corner Property. Steven Gunn, the owner of property where CBS Outdoor has applied for a billboard permit also spoke, as did Nick Seacrest and Terry Reid. Also present from the City Staff were Joel Paterson, Zoning Administrator; and Cheri Coffey, Assistant Planning Director. The hearings included approximately five hours of discussion on this and a related appeal. An audio tape recording was made of all sessions.

The record of this matter includes a number of submittals and email communications between representatives of all parties. These documents include:

- Briefs of Appellant, CBS Outdoor, dated December 16, 2015 and January 8, 2016, as well as email communications from Ms. Van Frank dated January 12, January 13, and January 14, 2016. The briefs and email communications included a number of exhibits which are also in the record. Additional exhibits were provided by Appellant at both hearings.
- Briefs of the City Staff, styled as Staff Reports, dated December 10, 2015; January 8, 2016; and January 13, 2016. An email communication from Katherine Lewis dated

January 14, 2016 is also a part of the record. The briefs were accompanied by a number of exhibits which are also in the record.

- Briefs of the Applicant Corner Property LC dated December 15, 2015; January 8, 2016; and January 13, 2016, including exhibits. Mr. Rogers also provided an exhibit at the January hearing.
- The record also includes an Interim Summary of Status and Procedure by the Hearing Officer dated December 30, 2015; an email communication from the Hearing Officer dated January 11, 2016; and a second email communication from the Hearing Officer dated January 13, 2016.
- An audio recording of both sessions of the hearing conducted in this matter is also part of the record.

The briefing of all parties is of high quality, thorough, and includes arguments that are well-articulated. This is particularly appreciated and noted.

The hearings in this matter were held concurrently with the hearings involving the same parties on a related matter, PLNAPP2015-00973, an appeal by CBS Outdoor of a decision to approve an application for a billboard at 726 West South Temple.

STANDARD OF REVIEW

Section F - Salt Lake Land Use Appeals Hearing Officer Policies and Procedures:

Where the Land Use Appeals Hearing Officer hears a matter brought on appeal from a decision by the Staff or any other administrative matter not previously decided by the Planning Commission or Historic Landmark Commission, or hears a variance request, the matter shall be heard *de novo*, which means that the item shall be newly considered and shall not be decided based on the facts or law previously reviewed.

The standard of review in this case is to determine, after a *de novo* review, whether the Appellant has met its burden to demonstrate that there is no substantial evidence to support the decision made or that the decision is illegal – contrary to the applicable ordinances, statutes, and case law.

ISSUE

Shall a permit be issued to CBS Outdoor for a billboard structure at approximately 738 West South Temple, Salt Lake City? The burden rests on the Appellant to demonstrate that a permit must be issued.

JURISDICTION

The City of Salt Lake denied a permit for a new billboard to be built by CBS Outdoor at approximately 738 West South Temple Street. A billboard use is provided for under the City's land use regulations. CBS filed a timely appeal. This matter is appropriately before the Appeal Authority as a challenge to a land use decision must be appealed to the Appeal Authority, which

in Salt Lake City is a Land Use Hearing Officer, before the matter can be heard by the District Court. Utah Code Ann. §10-9a-801(1).

ANALYSIS

The Appellant, CBS Outdoor, has the burden to demonstrate that the permit should be granted. If the application for the billboard complies with the applicable laws including the statutes and ordinances, it will be approved.

The application as approved by the City Administration represents an unusual case. Two applications for billboards were filed within a few days of each other in late 2014. The other applicant, Corner Property, has agreed to remove an existing billboard located on 500 South in the City and erect a new billboard structure at approximately 726 West South Temple. CBS Outdoor applied for permission to erect a billboard structure to replace a then-recently demolished billboard near its proposed new location at 738 West South Temple. Both applications cannot be approved, as the State highway regulations prohibit two billboards in close proximity to each other.

CBS argues that its application should be approved, as it was filed before the Corner Property Application. It also points to provisions of the State Code at Utah Code Ann. §10-9a-513(2), providing that if an application to relocate an existing nonconforming billboard is denied under these circumstances, the City is “considered to have initiated the acquisition of a billboard structure by eminent domain.”

In response, the City does not argue that the provision does not apply in this situation, but claims that it has no duty to approve the proposed billboard. The City also states that if compensation is due, so be it. The state statute provides a choice that the City may exercise – to approve a relocation or be considered to have initiated eminent domain.

The companion appeal brought by CBS was to challenge the approval of the other billboard application, filed by Corner Property. The City points to a relocation agreement with Corner Property providing that upon approval of the Corner Property application, an existing billboard on 500 South in the City will be removed. The City Administration considers the trade-offs to be beneficial to the City and consistent with the intent of the code to improve the appearance of city streets, pointing out that the sign to be removed is the only billboard on a large section of 500 South. Removal of the sign would make that corridor more attractive and improve vistas, according to the City Administration. The City argues that it may simply make the choice – allow the relocation of another sign instead of approving the proposed CBS sign, with the understanding that CBS may or may not have the opportunity to seek just compensation if it chooses to under the state law. It is beyond the scope of this appeal to determine whether or not eminent domain is initiated by this decision and, if so, what just compensation may be due.

Another argument advanced by CBS is that only the City Council can initiate eminent domain procedures. To agree with that position would be contrary to the duty of an appeal authority to reconcile statutes so they operate harmoniously. The 511 provision does not state that the next step after the “initiation” of eminent domain is to seize the property and write out a check. Every procedure provided for in the eminent domain statute at Utah Code Ann. §78B-6-501 et seq may still be utilized. While a taking can only be finalized by the City Council, under the provisions of Utah Code Ann. §78B-6-504(2)(b), Section 513 of the land use code refers to the “initiation” of the process, not the finalization of it. It is true that 78B-6-505 describes how eminent domain is initiated under typical circumstances – the commencement of negotiations. There is nothing in Section 513 that waives that requirement, and logically that negotiation would be the next step after refusing the relocation subject to the provision of Section 513.

CBS also contends that administrative officials cannot effect a “taking” or inverse condemnation under traditional law. This is not the case. There is a common distinction in the law between “facial” takings created by the adoption of a legislative act and “as applied” takings when administrative actions deprive an owner of a protected property right under the authority that a statute or ordinance provides. See, for example, *Tolman v. Logan City*, 2007 UT App 260, ¶9.

The City has the choice of denying the application (with perhaps the risk of paying just compensation), and has made a policy decision that to do so is in the public interest. If the Appeal Authority determined that the City’s choice was illegal, it would be reversed through the process of hearing this appeal. It has not been proven that the choice to deny the permit is illegal. Where there is broad discretion to be exercised in implementing City policies and preferences, and the City has provided extended proof that to do so is the preference of the elected leadership of the City, it is not the place of the Appeal Authority to substitute its judgment for that of an elected official.

Conclusion

CBS has not met its burden to demonstrate that it is entitled to approval of its sign application. Since another sign has been approved within a close proximity, the CBS application cannot also be approved. That, as all the parties agree on the record, would be illegal. The appeal of CBS is denied.

Dated this 15th day of January, 2016.



Craig M Call, Hearing Officer