ADMINISTRATIVE HEARING OF A LAND USE APPEAL
(Case Nos. PLNAPP2018-00278, Appealing **BLD2018-01367**)
(September 6, 2018)

Appellant:	Reagan Outdoor Advertising
Decision-making entity:	Zoning Administrator
Addresses Related to Appeal:	200 East 400 South 775 East 400 South
Request:	Appealing the City's denial of application to use banked billboard credits.
Brief Prepared by:	Samantha Slark, Senior City Attorney Katherine N. Lewis, Senior City Attorney

On April 6, 2018, Salt Lake City Corporation (the "City") denied Reagan Outdoor Advertising's ("Reagan") application to use banked billboard credits to build a billboard at 775 East 400 South (BLD2018-01367) ("775 East Sign"). On April 20, 2018, Reagan appealed.

BACKGROUND

On or around October 15, 2015, Reagan demolished a billboard located at 400 South and 200 East ("Dunkin Donuts Sign"). Reagan demolished the Dunkin Donuts Sign because the owner of the underlying property terminated Reagan's lease and required Reagan to remove the sign. The Dunkin Donuts Sign was located within the City's D-1 zone and in an area that has been designated as a "special gateway" for billboards. Thus, the provisions of Salt Lake City Code that govern billboards in special gateways apply.

Those provisions provide that "if a nonconforming billboard is demolished within a special gateway, the billboard owner may construct a new billboard along the same special gateway "in a zoning district equal to or less restrictive than that from which the nonconforming billboard was removed."[1] A new billboard may only be constructed in a special gateway if the billboard owner has deposited billboard credits in the City's billboard bank for that specific special gateway and the credits must be used within 36 months of the date of demolition of the billboard.[2]

Upon demolishing the Dunkin Donuts Sign, Reagan deposited 1272 credits in the City's 400 South special billboard bank. On February 7, 2018, Reagan applied to use those credits to construct a new billboard at 775 East 400 South. The new location is within the City's 400 South

[1] Salt Lake City Code § 21A.46.160(O).
[2] Salt Lake City Code § 21A.46.160(O)(2).

special gateway, but is zoned TSA-UN-T, which is more (not equal or less) restrictive than the D1 zoning at the location of the removed sign. For that reason, the zoning administrator found the application did not meet the requirements of section 21A.46.160(O) and denied the request. Reagan appeals that decision.

SUMMARY OF ARGUMENT

The appeals hearing officer should uphold the zoning administrator's decision because the TSA-UN-T zone is a more restrictive zone than the D1 zone and the application is not permitted by the plain language of the section 21A.46.160(O) of the Salt Lake City Code. This interpretation does not give rise to absurd results or render the City's billboard bank superfluous.

The hearing officer may also disregard Reagan's arguments that it was not provided notice under a provision the Utah State Transportation Code, that it is entitled to just compensation under provisions of state code, and that the City's billboard bank violates provisions of state law. The hearing officer does not have authority to make these determinations and, even if he did, the arguments lack merit.

ARGUMENT

1. The Hearing Officer's Authority to Address the Arguments Raised.

The City's hearing officers are conferred authority to review for correctness a zoning administrator's interpretation or application of Salt Lake City Code.[3] The City's hearing officers do not have authority to determine the scope or meaning of Utah Code or decide if provisions of Salt Lake City Code are contrary to or violate provisions of state law.[4] Those determinations are for the district court:

> The Hearing Officer is the designated appeal authority and the officer's authority is limited to considering applications of land use ordinances. *See* Utah Code § 10-9a-707(4) ("Only those decisions in which a land use authority has applied a land use ordinance to a particular application, person, or parcel may be appealed to an appeal authority."); City Code § 21A.16.010 (authority of Hearing Officer). The Hearing Officer does not have authority to determine, on a de novo or any other basis, whether the City's decisions were correct under State law. That determination is left to the district court. *See* Utah Code § 10-9a-801(2)(a) (" Any person adversely affect by a final decision made in the exercise of or in violation of the provisions of this chapter may file a petition for review of the decision with

[3] Salt Lake City Code § 21A.16.010 ("the hearing officer shall hear and decide appeals alleging an error in any administrative decision made by the zoning administrator . . . in the administration or enforcement of [Title 21A].")

[4] *See e.g.* Utah Code § 10-9a-707(4) ("Only those decisions in which a land use authority has applied a land use ordinance to a particular application, person, or parcel may be appealed to an appeal authority."); *Bennion v. Sundance Development*, 897 P.2d 1232, 1236, n.5 (Utah 1995) (finding County board was limited to review of interpretation of County code.)

> the district court . . ..."). To the extent that the Hearing Officer considered the City's application of state law - that is the City's decision to waive (or not waive) the City Code's prohibition on billboard relocation pursuant to Section 511 - the court will disregard the Hearing Officer's decision and instead review the Mayor's decision as if had been appealed directly pursuant to section 10-9a-801(2)(a), applying the arbitrary, capricious, or illegal standard of section 10-9a-801(3)(a). Insofar as the Hearing Officer considered or applied City Ordinance, the court will review the Hearing Officer's decision under the same standard.[5]

Reagan challenges the zoning administrator's decision both on grounds that the hearing officer has authority to decide and on grounds that the hearing officer does not have authority to decide. The hearing officer's authority to address the issue Reagan raised is discussed together with the City's response to each issue.

2. The TSA-UN-T zoning district is more restrictive than the D-1 zoning district.

a. Authority of the hearing officer to address this question and the standard of review.

Reagan argues the zoning administrator erred because the TSA-UN-T zoning district is not more restrictive than the D1 zoning district. This argument requires the hearing officer to review the zoning administrator's interpretation of various provisions of Salt Lake City Code, which is squarely within the authority of the hearing officer.[6] In addressing this argument, the hearing officer is charged with determining the correctness of the zoning administrator's interpretation and application of the plain meaning of provision of the Salt Lake City Code[7] and the rules of statutory interpretation apply.[8]

b. The TSA-UN-T zoning district is more restrictive than the D-1 zoning district.

The proposed 775 East Sign is located in the TSA-UN-T zone. The TSA-UN-T zone is the City's "transit station area district" under section 21A.26.078 of the Salt Lake City Code. The

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[5] Memorandum Decision, Feb. 3, 2016, *Outfront Media v. Salt Lake City*, Case No. 160900413. *See also Bennion*, 897 P.2d at 1236, n.5 (Utah 1995) (finding County board was limited to review of interpretation of County code.)

[6] Utah Code § 10-9a-707(4)(a).

[7] *See e.g.* Utah Code § 10-9a-707(4)(a) (an appeal authority shall "determine the correctness of the land use authority's interpretation and application of the plain meaning of the land use regulations"); *Brown v. Sandy City Bd. of Adjustment*, 957 P.2d 207, 209 (Utah Ct. App. 1998) (stating an appellate authority reviews the staff's interpretation of an ordinance for correctness.)

[8] *See e.g. Brendle v. City of Draper*, 937 P.2d 1044, 1047 (Utah Ct. App. 1997).

transit station areas are broken up into area types. The 775 East Sign location is in the "Urban Neighborhood Station" (TSA-UN). It is defined as:

> An evolving and flexible development pattern defines an urban neighborhood station area. Urban neighborhoods consist of multilevel buildings that are generally lower scale than what is found in the urban center station area. The desired mix of uses would include ground floor commercial or office uses with the intent of creating a lively, active, and safe streetscape.[9]

In addition, the 775 East Sign location is in a "transition area," as indicated by the "T" in the zoning designation. The purpose of a transition area is:

> [T]o provide areas for a moderate level of land development intensity that incorporates the principles of sustainable transit oriented development. The transition area is intended to provide an important support base to the core area and transit ridership as well as buffer surrounding neighborhoods from the intensity of the core area. These areas reinforce the viability of the core area and provide opportunities for a range of housing types at different densities. Transition areas typically serve the surrounding neighborhood and include a broad range of building forms that house a mix of compatible land uses. Commercial uses may include office, retail, restaurant and other commercial land uses that are necessary to create mixed use neighborhoods.

In other words, the TSA-UN-T zone was established to create a transitional zone between the higher density land uses around the 400 South TRAX line and the neighborhoods near the TRAX. The transition is achieved with lower heights for buildings, larger setbacks, and a less intensive mix of uses.[10]

In contrast, the D-1 zone is the City's highest density zone. The purpose of the D-1 zone is to "provide for commercial and economic development within Salt Lake City's most urban and intense areas," through very intense development "with high lot coverage and large buildings that are placed close together."[11] This intense development is supported by the building heights in the D-1 zone: building heights can be between 100 and 375 feet.[12] Setbacks are also limited and cannot exceed five feet in most areas of the D-1 Zone.[13] The effect of this is to create a zone that supports dense construction that is close together with tall structures. The D-1 zone is significantly less restrictive than the TSA-UN-T zone in height regulations, intensiveness of uses, and setback regulations. The City's Planning Division analyzed the two zones and list specific instances in

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[9] Salt Lake City Code §21A.26.078(B)(2).

[10] *See* Salt Lake City Code § 21A.26.078E2 (Table of Building Height Regulations); Salt Lake City Code § 21A.26.078E3b (Table of Setback Standards).

[11] Salt Lake City Code § 21A.30.020(A).

[12] *See* Salt Lake City Code § 21A.30.020(E)(6).

[13] Salt Lake City Code § 21A.30.020(E)(6).

which the D-1 zone is less restrictive than the TSA-UN-T zone in the analysis attached as Exhibit A.

Reagan argues the TSA-UN-T zone is not more restrictive than the D1 zone because (1) billboards are not permitted in either zone; (2) the billboard ordinance allows movement of the billboard *anywhere* within the special gateway, and (3) the billboard ordinance sets out the hierarchy of the zoning districts. Each of these arguments fail.

First, zoning regulates more than whether a use is permitted or not and the restrictiveness of a zoning district is not determined based solely on whether billboards are a permitted use. A zoning district can regulate density, height, and setbacks and whether a particular zoning district is more restrictive than another is determined based on all these factors.

Here, there is no question that the TSA-UN-T zone is more restrictive than the D-1 zone. The TSA-UN-T zone is a transition zone into a residential area and requires more limited density and lower heights. The purpose of the TSA-UN-T zone is to limit the intensity of development to protect the adjacent neighborhood, and it achieves that goal through a variety of zoning tools that are more restrictive than the D-1 zone, including, by requiring significantly lower minimum and maximum building heights,[14] prohibiting surface parking in the front of principal buildings in the transition zones,[15] and providing incentives through the "development score" process for adhering to development guidelines for the transit zone.[16]

Second, the plain language of the billboard ordinance makes clear a billboard may not be relocated *anywhere* within the special gateway. Relocation is limited to a zoning district within the special gateway that is "*equal to or less restrictive*."[17]

Third, Reagan argues section 21A.46.160(F) prioritizes removal of billboards in the D-1 zone and, therefore, the City cannot claim that the TSA-UN-T zone is more restrictive. This is incorrect. Section 21A.46.160(F) sets the rules for administering the general billboard bank. ~~It states a billboard owner may only build a new billboard in a residential, historic, or downtown zone if it demolishes two billboards in a lower hierarchy zone (such as CN, CB, or gateway).~~ It states that credits for demolishing billboards only become effective when the owner has demolished two billboards in a higher "priority." For example, credits for a billboard demolished in a commercial CN area will not become effective for use until the owner has demolished two billboards in a historic, residential or downtown area. This rule for administering use of billboard credits in the City's general billboard bank has no application to the rules for administering use of billboard credits in a special gateway account, which are governed by Salt Lake City Code § 21A.46.160(O) and requires a comparison of the relative restrictiveness of the zoning districts within the special gateway.

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[14] *See* City Code § 21A.26.078 (Table E2, Building Height Regulations, comparison between core TSA zones and transition zones).

[15] *See* Salt Lake City Code § 21A.26.078(H)(3).

[16] *See* Salt Lake City Code § 21A.26.078(D).

[17] Salt Lake City Code § 21A.46.160(O).

Section 21A.46.160(F) also fails to provide any guidance on the relative restrictiveness of the TSA-UN-T and D1 zones. It does not mention the TSA-UN-T zone because the ordinance creating that zone was passed long after the passage of section 21A.46.160(F). Section 21A.46.160(F) also does not engage in any analysis of the relative restrictiveness of the zones identified—listing the extremely restrictive historic zone together with the much less restrictive D1, D2 and D3 zones.

The TSA-UN-T zone is not equal to or less restrictive than the D-1 zone. It is unquestionably more restrictive. For that reason, the zoning administrator correctly interpreted the ordinance and properly denied Reagan's request to use its 400 South special gateway billboard credits to build a new sign at 775 East 400 South. That decision should be affirmed.

3. The Notice Provisions of Utah Code § 72-7-506 do not Apply.

a. Authority of the hearing officer to address this question.

Reagan incorrectly argues the TSA-UN-T zoning does not apply to Reagan because a provision of state code required the City to provide Reagan special and additional notice of the passage of 21A.26.078, which enact this and other zoning districts. This argument requires an interpretation and application of state code, which exceeds the authority conferred a City hearing officer.

b. The notice provision of Utah Code § 72-7-506 does not apply.

To the extent the hearing officer addresses this state law question, the notice provisions of Utah Code § 72-7-506 do not apply for two reasons. First, Utah Code § 72-7-506 only applies to changes or proposed changes to the ***outdoor or off-premise advertising provisions*** of municipal ordinances. Section 21A.26.078 is not an outdoor or off premise advertising provision. Rather, it creates zoning districts for application to areas around transit stations. No reference is made to outdoor or off-premise advertising.

Second, Utah Code § 72-7-506 expressly states it only applies to ordinance changes or proposed ordinance changes made under the authority of Title 72, Chapter 7, Part 5 of the Utah Code. Section 21A.26.078 is a zoning provision enacted under the authority provided municipalities under Utah Code Title 10, Chapter 9a.[18] The notice provision of Utah Code § 72-7-506 simply does not apply.

4. Finding the TSA-UN-T zone is more Restrictive does not give rise to Absurd Results.

a. Authority of the hearing officer to address this question.

Reagan incorrectly claims the zoning administrator's interpretation of Salt Lake City code gives rise to absurd results. This argument requires interpretation of the Salt Lake City Code, which the hearing officer has authority to address.

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[18] *See e.g.* Utah Code § 10-9a-505(1)(a).

b. The administrator's interpretation of § 21A.46.160(O) does not give rise to absurd results.

The zoning administrator's interpretation of § 21A.46.160(O) does not rise to absurd results because Reagan may relocate to D1 or TSA-UC zones in the 400 South special gateway. The D-1 zone is analogous to the TSA-UC zone. The TSA-UC zone is the urban center station zone and "contains the highest relative intensity level and mix of uses."[19] This type of station area is meant to support Downtown Salt Lake and not compete with it in terms of building scale and use."[20] The TSA-UN zone and the D-1 zone are much more analogous, in contrast to the TSA-UN-T zone, which is intended to "buffer surrounding neighborhoods from the intensity of the core area."[21]

As shown on the map attached as Exhibit B, there are ample properties in the TSA-UC zone along the 400 South special gateway. If Reagan had negotiated a billboard lease with a property owner located in the TSA-UC zone in the 400 south special gateway, it could have used its billboard credits in that equal or less restrictive zoning district. But, Reagan chose to negotiate a lease to locate the billboard at 775 East 400 South, in the TSA-UN-T zone. Reagan had three years to negotiate a lease with a willing property owner in an appropriate zone. Reagan failed to do so and the City is not required to approve the new billboard request.

5. The City does not owe just compensation for Reagan's failure to find an acceptable site to use its billboard credits.

a. Authority of the hearing officer to address this question.

Reagan argues that if the zoning administrator's interpretation of § 21A.46.160(O) is correct, just compensation is owed. No provision of Salt Lake City Code requires the payment of just compensation, if a billboard owner fails to meet the requirements § 21A.46.160(O). The hearing officer has authority to address that issue. To the extent Reagan argues just compensation is owed under provisions of state code or that Salt Lake City Code is contrary to state code, those issues are beyond the authority afforded the hearing officer.

b. Salt Lake City Code does not Require Payment of Just Compensation.

When a billboard lease terminates and a billboard is going to be evicted from the site the billboard owner has two options. One, immediately apply for relocation of the billboard as permitted by state law.[22] Two, demolish the billboard and bank the billboard credits in the City's billboard bank.[23] If the billboard owner pursues the first option and requests relocation under state

[19] Salt Lake City Code § 21A.26.078(B)(1).
[20] Salt Lake City Code § 21A.26.078(B)(1).
[21] Salt Lake City Code § 21A.26.078(A)(2).
[22] *See* Utah Code § 10-9a-511((2)(c).
[23] *See* Salt Lake City Code § 21A.46.160.

law the request to relocate must be made prior to demolition and eviction.[24] If the request meets all the requirements of state law, and the request is denied, just compensation may be owed. [25]

If the billboard owner pursues the second option, the billboard owner may deposit billboard credits in the City's billboard bank *after* demolition of the billboard. The billboard owner then has an additional three years to find a location that meets the requirements of relocation through the City's billboard banking system. No provision of state code requires the city to provide a billboard owner three additional years after eviction from a site to find a new location and no provision of state law requires a municipality to pay just compensation if the billboard fails to find a new location in the additional three years the municipality has elected to provide the billboard owner to find a new location.

In this case Reagan did not request relocation under state law prior to demolishing its billboard, presumably because Reagan had not negotiated a lease and had no site to move to. Rather, Reagan elected to bank its credits and take advantage of the three additional years provided by City ordinance. Reagan was unable to find a suitable location in those three years. No provision of state or city code requires the City to pay just compensation for that failure.

6. The City's billboard bank is not an illegal amortization of a billboard nonconforming use.

a. Authority of the hearing officer to address this question.

Reagan incorrectly argues the City's billboard bank violates state law because Utah Code § 10-9a-511(2)(b) prohibits municipalities from terminating billboards through amortization. This argument requires an interpretation and application of state code, which exceeds the authority conferred a City hearing officer.

b. The City's billboard bank is not an illegal amortization of billboards.

The City's billboard bank does not provide for the termination of a billboard through amortization. As described above, if a lease terminates and a billboard is evicted from property the billboard naturally retires through no action of the City. A billboard owner may preserve the billboard, if it applies to relocate the billboard under state law prior to eviction and demolition of the billboard. Alternatively, if the billboard owner is unable to find a location that meets the requirement of relocation under state law prior to eviction, the billboard owner may take advantage of the City's billboard bank. By doing so the billboard owner gains an additional 36 months to identify a location that meets the requirement of City code. As such, far from terminating the billboard, the billboard banking system actually provides an additional 36 months for the billboard owner to find a location for a billboard that otherwise naturally retires through no action of the City.

CONCLUSION

[24] *See* Utah Code § 10-9a-511(2)(c).
[25] *See* Utah Code § 10-9a-513.

For the reasons stated above, the zoning administrator properly denied Reagan's application to use billboard credits in the 400 South special gateway to construct a new billboard at 775 East and 400 south. That decision should be affirmed.

EXHIBIT A TO SALT LAKE CITY BRIEF

APPEAL NO. PLNAPP2018-00278

Planning Division Analysis of D-1 Zone and TSA-UN-T Zone

The Administrative Decision that the TSA-UN-T (Transit Station Area-Urban Neighborhood Station-Transition) zoning district is more restrictive than the D-1 (Central Business District) considered the zoning ordinance sign regulations and development regulations in relation to both zoning districts.

Development Regulations

Section 21A.26.078 of the zoning ordinance regulates TSA-UN-T zoned properties. Downtown Districts are regulated by section 21A.30, and section 21A.30.020 has specific regulations for properties in the D-1 zoning district.

In regards to maximum building height, the TSA-UN-T zoning district is more restrictive than the D-1 zoning district. The maximum height for buildings in the TSA-UN-T zone is 50 FT. Corner buildings in the D-1 zone shall not be less than 100 FT or more than 375 FT in height. A building height greater than 375 FT may be allowed through the Conditional Building and Site Design Review Process subject to the standards and procedures of chapter 21A.59 of the zoning ordinance.

In regards to setbacks, the TSA-UN-T zoning district is more restrictive than the D-1 zoning district. The TSA-UN-T corner and front yard setback requirements for properties located on 400 South is a minimum of 10 FT, and at least 50% of the street facing building façade must be built to the minimum. In the D-1 zoning district, no minimum front or corner side yards are required, however no setback shall exceed 5 FT unless approved through the Conditional Building and Site Design review process. The setback requirements in the D-1 zoning district allow for a larger developable area on a parcel than the TSA-UN-T setback regulations.

In addition to height and setback regulations, the TSA-UN-T zoning district has a more restrictive review process for new development than the D-1 zoning district. With the exception of single and two family dwellings, any addition of 1,000 SF or more is required to obtain a Development Score. The development score measures the level of compatibility between a proposed project and the station area plan. The development score is based on the development guidelines and development incentives in the Transit Station Area Development Guidelines. Project receiving a development score of 124 points or less will be reviewed and decided on by the Planning Commission. Projects receiving a score of 125 points or more qualify for administrative review. In contrast, new development in the D-1 zoning district does not require a planning review process unless height in addition to the permitted 375 FT is sought.

Sign Regulations

Section 21A.46 of the Salt Lake City zoning ordinance regulates signs. The zoning ordinance sign standards regulate the types of signs that are allowed, the number of signs, size, height, and setbacks. Section 21A.46.095 regulates signs for properties located in the TSA-UN-T zoning district. Sign regulations for properties located in the D-1 zone are regulated under section 21A.46.110.

In terms of types of sign types that are allowed, the D-1 zoning district is more permissible than the TSA-UN-T. The following signs types are allowed in the D-1 zoning district but are not allowed in TSA-UN-T zoning district:

- **Canopy, drive-through** - 40% of canopy face if signage is on 2 faces; 20% of canopy face if signs are on 4 faces
- **Canopy Signs** - 1 square foot per linear foot of storefront (sign area only); 20 square feet maximum per canopy
- **Pole Sign** - 1 square foot per linear foot of street frontage; 200 square feet maximum for a single business, 300 square feet maximum for multiple businesses. Maximum height of 45 feet.
- **Projecting Building Sign** - 125 square feet per side; 250 square feet total
- **Outdoor Television Monitor** - 62 square feet
- **Roof Signs** - 4 square feet per linear foot of building face or 6 square feet per linear foot of building face on buildings taller than 100 feet
- **Window Signs** – 25% of the total area of window frontage per use

Of the sign types that are allowed in both zoning districts, the TSA-UN-T is more restrictive than the D-1 zone in terms of the permitted size, height and number of signs. The following chart summarizes the difference in zoning regulations for some of the sign types that are permitted in both districts:

SIGN TYPE	REGULATION	TSA-UN-T SIGN REGULATIONS	D-1 SIGN REGULATIONS
FLAT SIGN (GENERAL BUILDING ORIENTATION)	MAXIMUM SIGN FACE	1.5 SQ FT per linear foot of building face	4 SQ FT per linear foot of building face
MONUMENT SIGN	MAXIMUM SIGN FACE	100 SQ FT	1 SQ FT per linear foot of street frontage
	HEIGHT	12 FT	20 FT
NEW DEVELOPMENT SIGN	MAXIMUM SIGN FACE	80 SQ FT	200 SQ FT
	# OF SIGNS	1 per development	1 per street frontage
PROJECTING BUSINESS STOREFRONT SIGN	MAXIMUM SIGN FACE	4 SQ FT per side; 8 SQ FT total	9 SQ FT per side; 18 SQ FT total
	HEIGHT	2 FT	4 FT

EXHIBIT B TO SALT LAKE CITY BRIEF

APPEAL NO. PLNAPP2018-00278

400 South Special Gateway Zoning Map