Salt Lake City Land Use Appeals Hearing Officer
Appeal of Administrative Decision
PLNAPP2018-00054
1383 East 2100 South – Sign License Requirement – Sugarmill Lofts LLC
July 3, 2018

This is an appeal of a Notice and Order - Civil written by the Salt Lake City Building Services Division dated January 2, 2018, citing the property owner for displaying signs without a sign license as required by SLC Code 21A.46.030. The appeal was brought by Sugarmill Lofts LLC (the Appellant).

RECORD

The record includes the Staff Report dated June 14, 2018; a "reply brief" submitted by the Appellant dated June 7, 2018; a "supplemental brief" submitted via email on June 20, 2018; and the City's response via email dated June 22, 2018. It also includes a supplemental brief filed by Appellant on July 2, 2018. The record of this matter further includes other email communications between and among the hearing officer and the parties including emails from the hearing officer dated June 15, 2018 and June 27, 2018 outlining the schedule for additional briefing. The record also includes the audio recording made of the Appeal hearing held June 14, 2018.

Appearing at the hearing on behalf of the Appellant was attorney George Hunt. Appearing for the City were Doug Dansie of the Planning Department and Paul Nielson, a Salt Lake City Attorney. While opportunity was extended for public comment, none was offered. The record provided is incorporated into this decision and provides substantial evidence to support it.

STANDARD OF REVIEW

Under the relevant City Ordinances, the standard of review for this type of appeal shall be de novo. The appeals hearing officer shall review the matter appealed anew, based upon applicable procedures and standards for approval, and shall give no deference to the decision below. SLC Code 21A.16.030(E)(1). The Appellant bears the burden to show the decision of the City to be in error.

FACTS

The relevant facts of this matter are that a business is located on Appellant's property. The business has displayed graphic images on the inside face of its exterior windows which the City enforcement staff has deemed to be oriented to the outside of the window, and thus subject to the

sign ordinance. Neither Appellant nor the business located on Appellant's property have obtained a license for the window graphic signs. Other businesses in the area have similar signs and also have not obtained licenses for those signs. The decision by the City staff to issue the Notice and Order here was made after one or more citizens complained about the graphic images. According to evidence submitted at the hearing in this matter, the City enforces the sign ordinance primarily, but not entirely, based on citizen complaints. The content of the graphic images or the nature of the business on the Appellant's property are irrelevant to this appeal.

ANALYSIS

It is not the role of the Land Use Appeals Hearing Officer to create new law. Therefore, when a party appearing before the hearing officer in an appeal provides legal argument, that party must also cite to relevant authority in the form of an ordinance, statute, or case law that supports that argument. Here the Appellant has not done so.

Appellant first claims that the window displays are exempt "interior signs" because they exist on the inside face of the windows, although oriented to the exterior. The clear language of the ordinance does not support this claim and there is no authority cited to support another interpretation.

Appellant's main argument here is a legal one. If a municipality relies primarily or exclusively on citizen complaints as the basis of enforcement of its sign ordinance, Appellant claims that the resulting enforcement is unconstitutional. While Appellant cites cases where enforcement has been held to be arbitrary, capricious and unreasonable, and therefore invalid, there is no case cited that involves a factual situation similar to the instant case or which supports the legal doctrine Appellate advances. Cases where the language of the law is held to be vague are not on point, even if the facts of such cases involve citizen complaints. There is no timely claim here that the language in the City's ordinance which requires a sign license is vague, but only that the decision to enforce the ordinance based on citizen complaints is unconstitutional. Among Appellant's arguments is a claim that such enforcement inherently relies upon undefined, vague, and arbitrary motivation or conclusion about the sign by the citizen who complains. This despite the evidence submitted by the City that once its staff receives a complaint, it conducts a separate review of the facts and ordinances to make an independent decision about whether the activities complained of actually violate an ordinance.

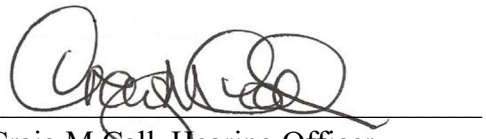
In its July 22, 2018 response to the Appellant's supplemental brief, the City cites Provo City v. Hansen, 585 P.2d 461 (Utah 1978), which is on point. In that case, also involving a land use ordinance, the Supreme Court held that the City of Provo's practice of enforcing the ordinance based on citizen complaints was not constitutionally fatal to that enforcement.

In its latest submittal, on July 2, 2018, Appellant raises new issues related to the vagueness of the City ordinance and other alleged problems with its text. These issues are not timely raised at this point in the process of review and will not be considered here.

CONCLUSION

Despite several opportunities to do so, Appellant has cited no legal authority to support the specific legal doctrine upon which its extended arguments rely. The role of the Land Use Hearing Officer is not to create new constitutional law. The appeal from the Notice and Order is denied.

Dated this 3rd day of July, 2018.



Craig M Call, Hearing Officer