

ADMINISTRATIVE HEARING OF A LAND USE APPEAL

(Case Nos. BLD2020-02189 and PLNAPP-2020-00569)

(November 5, 2020)

Appellant: Reagan Outdoor Advertising

Decision Making Entity: Zoning Administrator

Request: Appealing the City's denial of a request to construct a new/replacement billboard at 1650 S State Street using billboard credits

Brief Prepared by: Samantha Slark, Senior City Attorney

On July 17, 2020, the Zoning Administrator notified Reagan Outdoor Advertising ("Reagan") that its application for a permit to construct a new/replacement billboard using billboard credits did not meet the spacing requirements for use of those credits and the application was denied. Reagan has appealed that determination.

FACTS

1. Salt Lake City Code § 21A.46.160 sets forth a system by which the City will issue "credits," if a billboard owner demolishes a billboard. *See generally* Salt Lake City Code § 21A.46.160.

2. Those "credits" may be used to construct a new or replacement billboard. *See* Salt Lake City Code § 21A.46.160.E, M & O.

3. The credits must be used within a certain period of time. *See* Salt Lake City Code § 21A.46.160.G.

4. The location of the new or replacement billboard must also comply with the rules governing where certain "credits" may be used and the ordinance's spacing requirements. Salt Lake City Code § 21A.46.160.K, N-T.

5. Specifically, the ordinance states:

Billboards with an advertising face three hundred (300) square feet or less in size shall not be located closer than three hundred (300) linear feet from any other small billboard or eight hundred (800) feet from a large billboard on the same side of the street.

Salt Lake City Code § 21A.46.160.T.1.

6. Reagan submitted an application with the City seeking a permit to demolish a billboard at 1729 S State Street and a permit to construct a new or replacement billboard at 1650 S State Street, using the “credits” it receives from demolishing the 1729 S. State Street billboard. *See* Exhibit A.

7. The zoning administrator issued a decision stating the permit for the new or replacement billboard would be denied because the proposed location did not meet the 300-foot spacing requirement set forth in Salt Lake City Code § 21A.46.160.T.1. *See* Exhibit B.

8. Specifically, the communication stated:

I have notified the Building Services Division that the billboard permit[] at 1650 S State Street (BLD2020-02188) . . . cannot be issued because the proposed billboards do not meet the spacing requirements in Salt Lake City Code section 21A.46.160.T.1.

. . .

The proposed billboard at 1650 S State would be located within approximately 125 feet of an existing billboard located along the west property line of the same parcel.”

See Exhibit B.

9. Reagan has appealed.

SUMMARY OF ARGUMENT

This appeal turns on the meaning of “same side of the street,” as used in Salt City Code § 21A-46.160.T.1. The City contends the term is intended to include any billboard that is located in the same geographic area in relation to a street. In this case, any billboard that is located to the west of State Street, as opposed to any billboard that is located to the east of State Street. This interpretation is consistent with the plain language of the ordinance and its stated purpose, gives effect to notable omissions, and avoids absurd results.

I. REAGAN’S APPLICATION DOES NOT MEET THE SPACING REQUIREMENTS OF SALT LAKE CITY CODE § 21A-46-160.T.1.

Reagan’s application does not meet the spacing requirements of Salt Lake City Code § 21A.46-160.T.1 and was properly denied. Where the proper interpretation of an ordinance is at issue, reference to Utah’s rules of statutory interpretation is appropriate.¹ One rule of statutory construction commonly applied is that, “[i]f there is doubt or uncertainty as to the meaning or application of the provisions of an act, it is appropriate to analyze the act in its entirety, in light of its objective, and to harmonize its provisions in accordance with its intent and purpose.”² Another

¹ *Cahoon v. Hinckley Town Appeal Auth.*, 2012 UT App 94, ¶ 4, 276 P.3d 1141.

² *Clover v. Snowbird Ski Resort*, 808 P.2d 1037, 1045 (Utah 1991).

equally well recognized doctrine is that it is “assumed that each term [is] used advisedly,” that “the expression of one should be interpreted as the exclusion of another” and that omissions in statutory language are purposeful and should “be taken note of and given effect.”³ Likewise, where “statutory language lends itself to two alternative readings, [a court should] choose the reading that avoids absurd consequences.”⁴

Here, the City contends “same side of the street” includes all billboards that are located to the west of State Street. This interpretation is consistent with the plain meaning of the term “same side of the street” and gives effect to the fact that the ordinance reads “on the same side of the street” not “on the same side *of the same street*.” An omission that must be deemed purposeful.⁵ Interpreting the spacing provision to apply to all billboards to the west of State Street is also consistent with an expressly stated purpose of the billboard ordinance, which is to “promote the enhancement of the city’s gateways, views, vistas and related urban design elements of the city’s master plans.”⁶

Similarly, this interpretation does not render the words “same side of the street” superfluous, as Reagan erroneously contends. To the contrary, these words define the area to which the ordinance applies, whether that is to the north, south, east or west of the street at issue. Notably, Reagan does not provide any examples of how the ordinance could have been worded any differently to capture this meaning, despite claiming this could have been “easily” done.⁷

In contrast, Reagan contends the 300-foot spacing requirement is limited to billboards that are oriented north/south and have a State Street address, despite the absence of any such limiting language in the ordinance. This absence of any excepting language is especially notable because it stands in stark contrast to the language used for billboard spacing requirements set forth in Utah Code. Specifically, Utah Code section 72-7-505(3)(a) sets forth spacing requirements for billboards located along interstate and limited access highways.⁸ This provision expressly states

³ *Biddle v. Washington Terrace City*, 1999 UT 110, ¶ 14, 993 P.2d 875

⁴ *Utley v. Mill Man Steel, Inc.*, 2015 UT 75, ¶ 46, 357 P.3d 992.

⁵ *Marion Energy, Inc. v. KFJ Ranch P’ship*, 2011 UT 50, ¶ 14, 267 P.3d 863 (“We therefore seek to give effect to omissions in statutory language by presuming all omissions to be purposeful.”)

⁶ Salt Lake City Code § 21A-46-160.A.

⁷ A consideration of the issue reveals that there are extremely limited ways in which this spacing requirement can be conveyed. For example, the ordinance cannot read “shall not be located closer than three hundred (300) linear feet from any other small billboard . . . to the west of the street” because that would not capture circumstances where the street is oriented east/west, or the circumstances where the billboard is located to the west of the street. Similarly, streets not perfectly aligned on an east-west or north-south orientation would not be captured, i.e. streets that run southeast to northwest or northeast to southwest. Likewise, the ordinance cannot simply read within 300-feet of any other billboard, because that would not except billboards lying on the opposite side of the street, which is the exception the ordinance was clearly intended to allow. *See* Billboard Ordinance Amendments, § 21A.46.160.D.2.c.i & ii, which can be viewed here: <https://www.slc.gov/planning/2020/07/20/billboard-ordinance-amendments/>

⁸ Utah Code § 72-7-505(3)(a)

the 500-foot spacing requirement does not apply to billboards “*on the same side of the interstate highway or limited access primary highway [if they] are not simultaneously visible.*”⁹ The absence of a similar expressly stated exception in the City’s 300-foot spacing requirement must be understood as purposeful and given effect.

Reagan’s overly narrow reading of the 300-foot spacing requirement also gives rise to an absurd result that is wholly inconsistent with the ordinances stated purpose. Namely, it would permit clusters of billboards on corner lots, or along any one street, provided the billboard was offset on a small side street by some small margin, such that it could generate a different street address.

Finally, Reagan relies heavily on a decision from a California court, which is not binding in Utah, and is distinguishable in several important ways. Most notably, the ordinance at issue in the California case contained three additional important words, which are absent from the City’s ordinance. Its spacing requirement precluded billboards within 600 feet “on the same side of the same street.”¹⁰ In contrast, the City’s ordinance simply states “on the same side of the street,” omitting the additional “of the same” wording.¹¹ As previously stated, the omission of these additional words must be understood as purposeful and given effect.¹²

Another important distinguishing factor is that the ordinance at issue in the California case contained a separate spacing provision that specifically provided for the spacing of billboards at four-way intersections.¹³ It stated that “[n]o more than four off-site signs [could] be located at the intersection of two or more streets when such signs are located within 150 feet of the intersection of two street frontages.”¹⁴ The billboards at issue in the California case were located at an intersection and there was no dispute that they met the ordinance’s intersection spacing requirement.¹⁵ In contrast, the City’s ordinance does not have a separate provision regulating billboard spacing at intersections. Again, an omission that must be understood as purposeful and given effect.¹⁶

Also important to the California Court’s decision was the fact that it was reviewing the decision of an appeal board that had resulted in a reversal of the City’s decision. The court noted the appeals board played no part in drafting the ordinance and had no special insight regarding how the ordinance was intended to be interpreted.¹⁷ In addition, two city employees, one that had been involved in the drafting of the ordinance, testified the city had a longstanding practice of not

⁹ Utah Code § 72-7-505(3)(a)

¹⁰ *Van Wagner Commc’ns, Inc. v. City of Los Angeles*, 84 Cal. App. 4th 499 (Cal. App. 2000).

¹¹ Salt Lake City Code § 21A.46.160.T.1.

¹² See e.g. *Marion Energy, Inc.*, 2011 UT 50, ¶ 14.

¹³ *Id.* at 504.

¹⁴ *Id.*

¹⁵ *Id.* at 510, n. 11.

¹⁶ See e.g. *Marion Energy, Inc.*, 2011 UT 50, ¶ 14.

¹⁷ *Id.* at 509.

applying the provision at issue to corner lots, noting the existence of the intersection spacing provision, which applied to such lots.¹⁸

In contrast, Reagan is appealing the City's decision that the application does not comply with the spacing provisions of its ordinance, not a decision by an appeal board. In addition, the decision was made by the zoning administrator who (unlike the appeal board in the California case) is delegated authority to interpret the meaning of provisions of Title 21A.¹⁹ Similarly, there is no evidence that the City has a longstanding practice of not applying the 300-foot spacing provision to corner lots and the City's ordinance does not contain a separate provision governing spacing of billboards at intersections. These important differences render the California case of little precedential value.

CONCLUSION

The City's decision that Reagan's application does not meet the spacing requirements of Salt Lake City Code § 21A-46-160.T.1. is consistent with the plain language of the ordinance and its stated purpose, gives effect to purposeful omissions, and avoids absurd results. The denial should be affirmed.

¹⁸ *Id.* at 504.

¹⁹ Salt Lake City Code § 21A-12.010.

Exhibit A



Building Services & Civil Enforcement

slcpermits.com

451 South State Street, Room # 215
Salt Lake City, Utah 84111
PO Box 145490
801-535-6000

Office Use Only

Updated 7/2019

BLD#: _____ Date: _____

Received by: _____

IBC approval: _____ Date: _____

Zoning approval: _____ Date: _____

Planning approval: _____ Date: _____

Billboard Construction Application

Property address: 1650 S State St.

County tax parcel id #: 16181570200000 Zoning designation: Commercial

Project name: Arby's State St 30-Sheet

Contact Information:

Name: NICK E-mail: NICK@KLAGANUSA.COM
Address: 1775 Warm Springs Rd. Phone: 801.870.6726

Property Owner Information:

Name: Corri E-mail: CHICOL@ARKAPROPERTIESGROUP.COM
Address: 9350 Wilshire Blvd Phone: 310.623.6616
Billboard Owner's Bank and Account: relocating BLD2020-02922

Contractor Information:

Name: ROA State Licence #: 252213-SSSI

Sign Information:

Area of each face in sq. ft.: Face 1: 300 Face 2: 300 Total sq. ft.: 600

Illuminated Electronic Billboard: Yes ☐ No ☒

*PLEASE PROVIDE THE FOLLOWING INFORMATION WITH YOUR COMPLETED APPLICATION (ELECTRONICALLY AND ONLINE):

A site plan, drawn to scale, which includes the following information:

- Property lines with dimensions;
- Footprint, location and setback of the proposed billboard;
- Footprint and location of all buildings, landscaping, parking facilities and/or other signs on the property;
- Location and dimension of all rights-of-way, alleys, streets and easements; and,
- Distance (spacing) to the nearest existing billboard on the same side of the street.

Elevations, drawn to scale, which include the height, width and length of the proposed billboard.

Structural Calculations, prepared by a Utah-licensed Structural Engineer.

Submittal and completion of a Structural Observations application: http://www.slcdocs.com/building/Structural_Observation_022015.pdf

Electrical Design, prepared by a Utah-licensed Electrical Engineer.

Submittal and completion of a Special Inspections application: http://www.slcdocs.com/building/Special_Inspection_11-13-14.pdf

Payment of the Billboard Permit Construction fee: \$259.00

Applicant's Signature: _____

Owner's Signature: _____

Typing of names in the signature fields is acknowledgment that this application has been completed correctly and agreement to be bound by its terms.

Permit approval requires that a footing, foundation and final inspection be conducted. Please call 801-535-6000 to schedule an inspection. Inspections may also be scheduled on-line at slcpermits.com.

All documents submitted by a design professional shall be sealed (date and signature across the seal).



Building Services & Civil Enforcement
slcpermits.com

451 South State Street, Room 215
P.O. Box 145490
Salt Lake City, Utah 84111
801-535-6000

Office only

Updated 7/2019

BLD #: _____ Date: _____

Received by: _____

Zoning Approval: _____ Date: _____

Planning Approval: _____ Date: _____

Billboard Demolition Application

Property address: 1729 S State St

County tax parcel id#: 1618304003 Zoning designation: Commercial

Project Name: 1729 S State TD

Contact Information:

Name: Victoria Lanza E-mail: Victoria@Reaganusa.com

Address: 1775 Warm Springs Rd Phone: 801 870

Property Owner Information:

Name: Dan Nackermah E-mail: _____

Address: 1776 S West Temple Phone: 801.487.2161

Sign Information:

Area of each face in sq. ft.: Face 1: 300 Face 2: 300 Total sq. ft.: 600

Contractor Information:

Name: Reagan OA State License #: 252213-SSS1

PLEASE PROVIDE THE FOLLOWING INFORMATION WITH YOUR COMPLETED APPLICATION (ELECTRONICALLY AND ONLINE):

A site plan, drawn to scale, which includes the following information:

- Property lines with dimensions, and
- Size and location of the billboard to be demolished.

Payment of the Billboard Demolition fee: \$259.00

Applicant's Signature: _____

Owner's Signature: _____

Typing of names in the signature field is acknowledgment that this application has been completed correctly and agreement to be bound by its terms.

Permit approval requires that a final inspection be conducted. Please call 801-535-6000 to schedule a final inspection to verify that all elements of the billboard have been removed from the site.

Exhibit B

Joshua Peterman

Subject: FW: (EXTERNAL) RE: BLD2020-02189 letter - 1051 S 300 West

From: Paterson, Joel [<mailto:joel.paterson@slcgov.com>]
Sent: Friday, July 17, 2020 9:16 AM
To: Guy Larson; Victoria Lara
Cc: Norris, Nick; Robinson, Molly; Slark, Samantha; Nielson, Paul; Mikolash, Gregory; Hamilton, Kevin
Subject: RE: (EXTERNAL) RE: BLD2020-02189 letter - 1051 S 300 West

Mr. Larson,

I have notified the Building Services Division that the billboard permits at 1650 S State Street (BLD2020-02188) and 1051 S 300 West (BLD2020-02189) cannot be issued because the proposed billboards do not meet the spacing requirement in Salt Lake City Code Section 21A.46.160.T.1. This e-mail is intended to serve notice of final administrative decision regarding these two permits.

1650 S State – BLD2020-02188 – The proposed billboard at 1650 S State would be located within approximately 125 feet on an existing billboard located along the west property line of the same parcel.

1051 S 300 West – BLD2020-02189 – The proposed billboard at 1051 S 300 West would be located within approximately 250 feet of an existing billboard located on along the western property line of the parcel located at 1005 S 300 West.

You can appeal these final administrative decisions subject the provisions in Salt Lake City Code Section 21A.16 Appeals of Administrative Decisions. You can find the Appeal of a Decision application and instructions on filing the application online here. If you choose to file appeals regarding the administrative decisions a separate appeal application is required for each of the billboard permits applications.

Appeals of administrative decisions must be submitted within 10 calendar days. The computation of time is regulated in Salt Lake City Code Section 21A.04.020.F. which states:

“The time within which an act is to be done shall be computed by excluding the first and including the last day. If the last day is a Saturday, Sunday or legal holiday recognized by the City, that day shall be excluded.”

If you choose to appeal, the applications must be submitted by 5:00 pm on July 27, 2020.

Thank you,

JOEL PATERSON, AICP
Zoning Administrator

PLANNING DIVISION
DEPARTMENT of COMMUNITY and NEIGHBORHOODS
SALT LAKE CITY CORPORATION

Email: Joel.Paterson@slcgov.com
TEL 801-535-6141
FAX 801-535-6174

<https://www.slc.gov/planning/>