Salt Lake City Land Use Appeals Hearing Officer
PLNAPP2020-00569
Appeal from Administrative Decision
1650 S State Street – Reagan Outdoor Advertising
December 10, 2020

This is an appeal from an administrative decision to deny a request by Reagan Outdoor Advertising (ROA) to construct a billboard on the property located at approximately 1650 S. State Street. The denial of the building permit BLD2020-02188 was based on the distance requirement from another billboard. The appellant claims that the interpretation of the requirement is incorrect. The appeal is granted as explained below.

RECORD

The record includes the Staff Report, a document of 23 pages dated November 12, 2020, an undated "revised appeal" filed by ROA; an appeal brief filed by the City Attorney dated November 5, 2020; supplemental briefing by the City Attorney dated November 25, 2020; an email response from the attorney for ROA filed November 29, 2020. The record also includes several exhibits which were attached to the briefing or provided separately including those entitled: 1739 S State Street (screen shots); 1999 Aerial; Building Permits Report (1360 S. Redwood Road); Distance from Tattoo Sign; Documents related to Demolition Application; May 2002 Google Earth Image; Property owner communication; Screen Shots (1651 S State Street); and Sign Rendering (1650 S State Street). On November 18, 2020 counsel for ROA also provided three more exhibits, Pioneer Road Permit; Pioneer Rd-SitePlan; and California Road Permit. Also included in the record is a recording of the Webex electronic hearing held on November 12, 2020.

BACKGROUND

This matter involves the interpretation and application of language in the Salt Lake City Code at Section 21A.46.160 which provides:

> Small Signs: 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 feet (800') from a large billboard on the same side of the street.

It is agreed that this section of the code applies to the location of a replacement small billboard for which ROA submitted a building permit application. The City denied the application, stating that the proposed location of the billboard does not comply with this provision of the code. ROA argues that the proposed location does comply because the words "same side of the street" do not apply to the other billboard within 300 feet that is the basis of the City's decision to deny – that the other billboard is not on the "same side of the street".

The new replacement billboard is proposed to be located on and oriented to State Street. Although the other billboard is indeed located within 300 feet of the proposed new billboard, the other billboard is

oriented to another street which runs perpendicular to State Street. Since the other billboard is not located on the same side *of the same street*, argues ROA, its location should not affect the opportunity to install a new billboard on State Street, which is a different street.

ANALYSIS

ROA argues here that there are three examples of billboard permits where the city code was interpreted by the City to allow billboards closer than the distance involved in the instant case when the billboards are oriented to different streets. The City basically agrees in general terms but argues that one of the examples ROA cites was before a change in the relevant text in the ordinance and that previous interpretations and applications of the ordinance language are not to be given any deference here.

This appears to boil down to how one interprets the ordinance. The City argues that on appeal, there is to be no deference to any previous interpretation of the code by the City. It points out that a court would review the interpretation of the code for correctness only, citing *Outfront Media LLC v. Salt Lake City Corp*., 2017 UT 74, 416 P.3d 389:

> In the past, we "afford[ed] some level of non-binding deference to" a local agency's interpretation of its own ordinance. Carrier v. Salt Lake Cty., 2004 UT 98, ¶ 28, 104 P.3d 1208. But this deference cannot stand in view of subsequent developments in our precedent. Our cases since Carrier have expressly rejected the notion of affording Chevron-style deference to state agencies' interpretation of statutes, see Hughes Gen. Contractors, Inc. v. Utah Labor Comm'n, 2014 UT 3, ¶ 25, 322 P.3d 712, or regulations, see Ellis-Hall Consultants v. Pub. Serv. Comm'n, 2016 UT 34, ¶ 21, 379 P.3d 1270. Given that we do not defer to state agencies on pure questions of law, there is even less reason to defer to local agencies' interpretations of ordinances, given that those local agencies "do not possess the same degree of professional and technical expertise as their state agency counterparts." Carrier, 2004 UT 98, ¶ 28, 104 P.3d 1208. In keeping with our recent decisions, we review the interpretation of ordinances for correctness.

That said, we are left to determine what the "correct" interpretation of the code is. In a recent restatement, the Utah Supreme Court outlined how we are to interpret the language of a statute:

> ". . . It is well settled that when faced with a question of statutory interpretation:
> 1. Our primary goal is to evince the true intent and purpose of the Legislature.
> 2. The best evidence of the legislature's intent is the plain language of the statute itself.
> 3. We presume that the legislature was deliberate in its choice of words and used each term advisedly and in accordance with its ordinary meaning.
> 4. Where a statute's language is unambiguous and provides a workable result, we need not resort to other interpretive tools, and our analysis ends.
> 5. However, our plain language analysis is not so limited that we only inquire into individual words and subsections in isolation;
> 6. Our interpretation of a statute requires that each part or section be construed in connection with every other part or section so as to produce a harmonious whole.

7. When interpreting statutory text, we presume that the expression of one term should be interpreted as the exclusion of another,
8. We will not infer substantive terms into the text that are not already there.
9. We assume, absent a contrary indication, that the legislature used each term advisedly and
10. [We] seek to give effect to omissions in statutory language by presuming all omissions to be purposeful."

2 Ton Plumbing LLC v. Thorgaard, 2015 UT 29; 345 P.3rd 675, ¶¶ 31-32. (The exact text of the decision by the Supreme Court is here slightly paraphrased, as shown. The entire citation has been reformatted by numbering each sentence in the two paragraphs for easier reference. Quotation marks and citations to other cases have been omitted.)

ROA cites additional language from a series of Court of Appeals cases with particular regard to the interpretation of zoning ordinances, first stated by the Court in *Patterson v. Utah County Bd. of Adjustment*, 893 P.2d 602, 606 (Utah Ct. App. 1995). This citation is found most recently in *Ferre v. Salt Lake City*, 2019 UT App 94, ¶17:

> In applying this statutory scheme, we are mindful of Utah's long-standing principle that "because zoning ordinances are in derogation of a property owner's common-law right to unrestricted use of his or her property, provisions therein restricting property uses should be strictly construed, and provisions permitting property uses should be liberally construed in favor of the property owner." *Patterson*, 893 P.2d at 606. Because [the zoning ordinance] allows a property owner to seek an exception to otherwise applicable land use restrictions, we must "liberally construe" the chapter "in favor of the property owner" seeking a special exception.

So we are to interpret the code to "evince the true intent and purpose of the Legislature", or the Salt Lake City Council in this instance, while liberally construing it in favor of the property owner. The billboard ordinance includes a purpose statement:

> Purpose Statement: This section is intended to limit the maximum number of billboards in Salt Lake City to no greater than the current number. This chapter further provides reasonable processes and methods for the replacement or relocation of existing nonconforming billboards to areas of the city where they will have less negative impact on the goals and policies of the city which promote the enhancement of the city's gateways, views, vistas and related urban design elements of the city's master plans.

Salt Lake City Code at Section 21A.46.160.A. This statement describes at least two goals: To limit the maximum number of billboards to the current number as well as to provide "reasonable" processes and methods to relocate nonconforming billboards. It is to be noted that the proposed billboard is a replacement and does not increase the total number of billboards in the City. The purpose to limit the number of billboards is thus fulfilled even if the proposed location is allowed. The other purpose of fostering "reasonable processes and methods" to relocate billboards is at issue here.

To restate the relevant section of the code with which we are concerned:

> Small Signs: 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 feet (800') from a large billboard *on the same side of the street*.

It is undisputed that the code prohibits new billboards within certain distance of another existing large billboard unless the existing large billboard is not on the same side of the street. In other words, if the existing large billboard is on the other side of the street.

It is clear that the large billboard at issue here is not on the other side of the street – which would be the East side of State Street in this instance. The large billboard close to the proposed billboard location is West of State Street, not East. But that other billboard is not oriented to "the" street that the new billboard is to be oriented to – State Street.

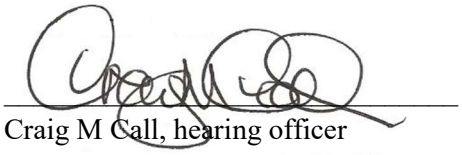
So ROA asks that the code be interpreted to provide two exceptions to the distance requirements: 1) for billboards on the other side of the street and 2) for billboards that are oriented to a different direction on a different street than "the street" where the proposed billboard is to be located. This interpretation of the existing text appears to have been applied by the City staff on at least two occasions, according to the exhibits, since the existing text was adopted. While the City's previous interpretations are not to be given any deference, the former interpretation by the City does illustrate that the interpretation advanced by ROA is a credible one and positions this interpretation within the realm between a strict and a liberal interpretation. Reasonable minds could differ on what is intended by the plain language "the same side of 'the' street".

We are directed by the Court to interpret the code liberally in favor of the property owner. The adopted language can be liberally but not unreasonably interpreted to imply that when it refers to "the" street it refers to one street and the orientation of a billboard to the traffic on that one street. That is probably what would be understood by the wording of the code in everyday conversation – that on the same side of the street means on the same side of "the" particular street where there would be a logical concern about someone traveling along the street being subjected to too many interruptions to the city's "gateways, views, vistas and related urban design elements". The interpretation here may be liberal but it is not unreasonable – witness the same interpretation by City staff in past years.

This interpretation also advances the purpose of the ordinance calling for "reasonable" regulations, knowing that any billboard installed in a new location is to be relocated from a prior location where it also may have interfered with public vistas. It would appear that granting the appeal advances both of the cited purposes of the billboard ordinance – it has not increased the allowed number of billboards and it imposes reasonable regulations. The City remains vested with the right to amend and clarify the code, just as it could have done at any time since the code was allegedly incorrectly interpreted ten or eleven years ago.

The Administrative Decision is reversed. The appeal is granted.

Dated this 10th day of December, 2020.



Craig M Call, hearing officer