

SALT LAKE CITY LAND USE APPEALS HEARING DECISION
Case No. PLNAPP2021-00090
APPELLANT: REAGAN OUTDOOR ADVERTISING
JULY 12, 2021

On January 25, 2021, Salt Lake City, through its Zoning Administrator, denied a request by Reagan Outdoor Advertising (Reagan) to construct a billboard at 1650 South State Street (“the State Street Billboard”). Reagan Outdoor Appeals that decision. A public hearing was held on May 13, 2021 and appearances were made by representatives of Salt Lake City and Reagan Outdoor. Some public comment was also received. At the close of that hearing, the Appeals Hearing Officer allowed both Reagan Outdoor and Salt Lake City to submit additional materials. Both parties have done so and the record in this matter reflects those submissions.

Based on the evidence in the record including the Staff Report, documents submitted by Reagan Outdoor and Salt Lake City, and information gathered at the public hearing of this matter on October 10, 2019, the Appeal is denied.

The procedural history of this matter is material. On July 17, 2020, Salt Lake City, through its Zoning administrator denied a request for a building permit by Reagan to construct the State Street Billboard and stated as its reason that the billboard was insufficiently spaced from another billboard on the same lot, described as the Arby’s billboard. The City and the State of Utah allow a billboard to be constructed when the location is more than a certain distance from existing billboards. The denial by Salt Lake City was based on an interpretation of the manner in which distance is measured. Reagan Outdoor successfully appealed. The Land Use Authority rejected the city’s interpretation of the distance measurement and found that the Arby’s billboard did not preclude the requested relocation. Upon remand to the City, the Zoning Administrator again declined to issue a building permit based upon the location of another proximate billboard (“the Resolute Tattoo billboard”).

Reagan appeals on two grounds. First, it asserts that the City’s failure to raise the Resolute Tattoo billboard at the time of the first denial constitutes a form of res judicata, preventing the City from denying the billboard on new, previously un-asserted grounds. Second, Reagan asserts that even if the City is entitled to deny its application on new grounds, the Resolute Tattoo billboard is illegal, and cannot form the basis to deny an otherwise legally sited installation.

It is undisputed that the Resolute Tattoo billboard is within 300 feet of Reagan’s proposed relocation. Also undisputed is that the Resolute Tattoo billboard appears on Salt Lake City’s billboard map but not on the Utah Department of Transportation’s list of billboard permits.

I. SALT LAKE CITY IS NOT PRECLUDED FROM DENYING THE REAGAN APPLICATION BASED ON THE RESOLUTE TATTOO BILLBOARD.

A. SALT LAKE CITY IS NOT PRECLUDED FROM DENYING THE REAGAN APPLICATION BASED ON PRINCIPLES OF RES JUDICATA.

There is no dispute that when Salt Lake City denied Reagan's request for a building permit on July 17, 2020, the city cited only the distance to the Arby's billboard as a basis for declining Reagan's application. No reference at the time of the initial denial was made to the Resolute Tattoo billboard or any other issue. On January 25, 2021, the City relied on that billboard when it rejected the permit again, after the matter was returned following the first appeal.

This was not the first time the impediment created by the Resolute Tattoo billboard was raised. As part of the first appeal process and during the hearing, the City raised the issue of the Resolute Tattoo billboard and noted that even if the appeal was granted, the Billboard would still be in violation of the City's zoning ordinance. The November 12, 2020 hearing on the first appeal included multiple instances of argument by both parties as to the legality of the Resolute Tattoo billboard and questioning by the Hearing Officer on that issue. Representatives from Reagan asserted that the Resolute Tattoo billboard was illegal and should have been subject to an enforcement action. Prompted by a subsequent question from the Hearing Officer, the parties engaged in a few minutes of additional argument on the issue. At the close of that discussion, the hearing officer stated that the issue was "off topic" for the matter before him but that Reagan should note that the City was taking the position that the application still might be denied. Later, at the end of the hearing, the officer noted that the Tattoo billboard was a separate matter to be subsequently resolved and not before him.

Nothing in the first decision, issued on December 10, 2020 indicates a determination that the City was precluded from asserting its right to enforce the distance ordinance as related to the Resolute Tattoo billboard. The Hearing Officer determined that the City's interpretation of the distance ordinance was wrong, reversed that determination and granted the appeal.

Nonetheless, Reagan argues that res judicata principles of issue and claim preclusion prevent the City from considering the Resolute Tattoo billboard as a basis now for denying a building permit for the 1650 State Street billboard. Reagan argues that these principles apply to the relationship between the first appeal related to the Arby's sign and this appeal, arising out of the Resolute Tattoo sign. Neither issue preclusion nor claim preclusion apply.

In both cases, res judicata is intended to provide for finality in judicial decision-making and prevent the re-litigation of issues that were, or should have been addressed in a previous proceeding. *Mack v. Utah State Dept. of Com. Div. of Sec.*, 2009 UT 47, ¶221 P. 3d 194.

Issue preclusion is intended to prevent relitigation of facts and issues that were fully litigated in the first suit. Among the elements required to invoke issue preclusion is that “the issue decided in the first action [is] identical to the one presented in the instant action.” *Oman v. Davis School Dist.* 2008 UT 70, ¶¶28-29, 194 P. 3d 956. Reagan’s argument fails as to this element. The issue before the hearing officer in the previous proceeding was not whether there were any distance impediments to Reagan’s proposed billboard. The issue was the correctness of the City’s interpretation of “same side of the street” in the context of the City’s billboard ordinance. The Hearing Officer’s decision was narrowly limited to that issue and did not go further. As a result there is not the identity necessary to invoke issue preclusion.

Nor does claim preclusion apply. A necessary element of claim preclusion is that “the first suit must have resulted in a final judgment on the merits.” *Macris & Assoc., Inc. v. Neways, Inc.* 2000 UT 93, ¶19-20, 16 P.3d 1214. The hearing officer determined that the City’s interpretation of the billboard ordinance was incorrect but did not order the City to issue a permit nor did he make a finding that the billboard was permitted. Rather, the hearing officer determined that the City was wrong to refuse to permit based on the distance to the Arby’s billboard.

Finally, the Hearing Officer clearly did take note of the issues relating to the Resolute Tattoo billboard and did not find them to be precluded or waived. Instead, the hearing officer noted during the public hearing that those issues would need to be considered if he granted Reagan’s appeal and the matter was returned to the City. When the issue was raised, rather than suggest that the Hearing Officer should find the distance to the Resolute Tattoo billboard precluded, Reagan argued that the Billboard was illegal and therefore irrelevant. Consistent with his statements during the Public Hearing, the written decision left issue of the Resolute Tattoo billboard unaddressed. Because the November 2020 decision was not a final decision on the merits of the State Street billboard, there can be no claim preclusion.

Because there is neither issue preclusion nor claim preclusion, Reagan’s res judicata argument fails.

B. SALT LAKE CITY IS NOT PRECLUDED FROM DENYING THE REAGAN APPLICATION BASED ON QUESTIONS OF THE LEGALITY OF THE RESOLUTE TATTOOBILLBOARD.

Reagan claims that because the Resolute Tattoo billboard has a disputed Salt Lake permit history and does not have a UDOT Permit; it is illegal and cannot form the basis for a distance-based denial of its application. Salt Lake City disagrees and asserts that the billboard is marked as Billboard 165 on the City’s billboard map and the City’s database shows a permit issued in 1991. While Reagan has raised an issue of fact as to the legitimacy of the Resolute Tattoo billboard, this is not the forum to resolve that dispute. In fact, during the November 2020 hearing, a Reagan representative asked why there had been no enforcement action with regard to the Resolute Tattoo Billboard. Due process requires that any finding relating to the legality of that billboard occur in a proceeding where the owner of that billboard can participate and be heard. This is consistent with Utah law which provides very specific due process and procedural protections in any action affecting the property rights of billboard owners. Utah Code Ann. §10-

9a-513. Reagan or any other citizen may report the allegedly illegal billboard to the City which will prompt an investigation and potential enforcement action. The Resolute Tattoo billboard may very well be illegal, but this Appeals Hearing Officer cannot make a finding that the billboard is illegal without the participation of its owners in the process provided by the City for resolving zoning and billboard disputes.

The Appeal is denied.

DATED this 12th day of July, 2021

/Mary J. Woodhead/
MARY J. WOODHEAD
Appeals Hearing Officer