



Staff Report

PLANNING DIVISION
DEPARTMENT of COMMUNITY and NEIGHBORHOODS

To: Salt Lake City Appeals Hearing Officer

From: Amy Thompson, amy.thompson@slcgov.com or 385-226-9001

Date: March 10, 2022

Re: PLNAPP2021-00587 – Appeal of an Administrative Decision to Deny a Permit to Construct a Billboard – *Building Permit BLD2021-03844*

Appeal of Administrative Decision

PROPERTY ADDRESS: Approximately 938 North 900 West

PARCEL ID: 08-26-409-009

PARCEL DISTRICT: CB (Community Business)

ZONING ORDINANCE SECTIONS:

- 21A.46.160 Billboards
- 21A.16 Appeals of Administrative Decisions

APPELLANT: Reagan Outdoor Advertising, represented by Joshua Peterman

APPEAL ISSUE:

Salt Lake City made an administrative decision to deny a request by Reagan Outdoor Advertising to construct a new billboard at approximately 938 North 900 West. The request was denied because under Salt Lake City's billboard regulation, found in City Code section 21A.46.160.N, new billboards are prohibited within 600 feet of a gateway. The proposed location of the billboard is on a parcel that abuts Interstate 15, which is identified as a gateway in City Code section 21A.46.160.B.

BACKGROUND:

This appeal was previously heard by the appeals hearing officer on December 9, 2021. Due to a noticing issue regarding a required public hearing for this item, the item is being reheard.

ATTACHMENTS:

- [A. Appeal Application & Information](#)
- [B. Salt Lake City Response to Appeal](#)

ATTACHMENT A: APPEAL APPLICATION & INFORMATION



Appeal of a Decision

SALT LAKE CITY PLANNING

OFFICE USE ONLY

Petition #:	Received By:	Date Received:
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Appealed decision made by:

Planning Commission Administrative Decision Historic Landmark Commission

Appeal will be forwarded to:

Planning Commission Appeal Hearing Officer Historic Landmark Commission

Petition Name and # Being Appealed:

PLEASE PROVIDE THE FOLLOWING INFORMATION

Decision Appealed:
BLD2021-03844

Address of Subject Property:
938 N 900 W, Salt Lake City, UT 84116

Name of Appellant: Reagan Outdoor Advertising	Phone: 801-363-4300
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Address of Appellant:
c/o Josh Peterman, 111 East Broadway, 11th Floor, Salt Lake City, UT 84111

E-mail of Appellant: josh@ck.law	Cell/Fax: 801-363-4378
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Name of Property Owner (if different from appellant):
DSM & Sons, Inc

E-mail of Property Owner:	Phone:
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Appellant's Interest in Subject Property:
Leasehold Interest

AVAILABLE CONSULTATION

Please email zoning@slcgov.com if you have any questions regarding the requirements of this application.

APPEAL PERIODS

- An appeal shall be submitted within ten (10) days of the decision.
- Applicant of an HLC decision being appealed can submit within thirty (30) days of a decision.

REQUIRED FEE

- Filing fees must be submitted within the required appeal period. Noticing fees will be assessed after application is submitted
- Filing fee of **\$265**, plus additional fees for required public notices and multiple hearings.

SIGNATURE

If applicable, a notarized statement of consent authorizing applicant to act as an agent will be required.

Signature of Owner or Agent: /s/ Joshua Peterman	Date: 06/04/2021
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SUBMITTAL REQUIREMENT



A written description of the alleged error and the reason for this appeal.

WHERE TO FILE THE COMPLETE APPLICATION

Apply online through the [Citizen Access Portal](#). There is a [step-by-step guide](#) to learn how to submit online.

INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

JKP I acknowledge that Salt Lake City requires the items above to be submitted before my application can be processed. I understand that Planning will not accept my application unless all of the following items are included in the submittal package.

Additional Guidelines for Those Appealing a Planning Commission or Landmarks Commission Decision

A person who challenges a decision by the Planning Commission or the Landmarks Commission bears the burden of showing that the decision made by the commission was in error.

The hearing officer, according to state statute, must assume that the decision is correct and only reverse it if it is illegal or not supported by substantial evidence in the record.

“Substantial evidence” means information that is relevant to the decision and credible. Substantial evidence does not include public clamor and emotion. It involves facts and not mere speculation. A witness with particular expertise can provide substantial evidence, but conjecture and public opinion alone are not substantial evidence.

The “record” includes information, including the application by the person seeking approval, the staff report, the minutes of the meeting, and any information submitted to the commission by members of the public, the applicant or others, before the decision was made. It does not include facts or opinion, even expert opinion, expressed after the decision is made or which was not available to the commission at the time the decision was made.

A decision is “illegal” if it is contrary to local ordinance, state statute or case law, or federal law. An applicant is entitled to approval if the application complies with the law, so a person challenging a denial should show that the application complied with the law; a person challenging an approval should show that the application did not conform to the relevant law. Issues of legality are not restricted to the record of the decision, but the facts supporting or opposing the decision are limited to those in the record.

With regard to the factual information and evidence that supports a decision, the person bringing the appeal, according to a long line of decisions handed down by the Utah State Supreme Court and the Court of Appeals, has a burden to “marshal the evidence” and then to demonstrate that the evidence which has been marshaled is not sufficient to support the decision.

The appellant is therefore to:

1. Identify the alleged facts which are the basis for the decision, and any information available to the commission when the decision is made that supports the decision. Spell it out. For example, your statement might begin with: “The following information and evidence may have been relied upon by the Commission to support their decision . . .”
2. Show why that basis, including facts and opinion expressed to the commission is either irrelevant or not credible. Your next statement might begin with: “The information and evidence which may have been relied upon cannot sustain the decision because . . .”

If the evidence supporting the decision is not marshaled and responded to, the hearing officer cannot grant your appeal. It may be wise to seek the advice of an attorney experienced in local land use regulation to assist you.

Reasons for Appeal:

By email dated May 28, 2021, the City denied Reagan Outdoor Advertising's ("ROA") application to relocate a billboard from 912 N 900 W, Salt Lake City, UT 84116 to 938 N 900 W, Salt Lake City, UT 84116.

The stated reason for the City's denial was as follows:

I have notified the Building Services Division that the billboard permit request for a new billboard at 938 N 900 West (BLD2021-03844) cannot be issued under Salt Lake City's billboard regulations found in City Code section 21A.46.160.N which prohibits new billboards within 600 feet of a gateway. The proposed location of the billboard is on a parcel that abuts Interstate 15, which is identified as a gateway in City Code section 21A.46.160.B. .

See email, attached hereto as Exhibit A.

The City's denial of ROA's application is incorrect as Utah Code section 10-9a-513 preempts the cited City ordinances, and allows ROA to relocate the billboard "into any commercial, industrial, or manufacturing zone within the municipality's boundaries, if the relocated billboard is within 5,280 feet of the billboard's previous location..." The new location for the billboard is in a proper zone, well within the 5,280 foot radius, and meets all other applicable spacing requirements.

The City's denial assumes that the law requires ROA to lay out the legal basis for its request in its application. Nothing in state statute or city ordinance requires that. Instead, city ordinance requires that an applicant file "a form provided by the zoning administrator." 21A.46.160.L.1. The form promulgated by the City does not require the applicant to lay out the legal basis for the request. But even if such information was required, prior to the City issuing its denial, ROA amended its application to clarify that it was requesting relocation pursuant to the aforementioned State statute.

The City has rejected the amended application, advising ROA that it must file a new application. See Exhibit A. Pursuant to that instruction, ROA has filed a new application (BLD2021-04949) requesting relocation under State law and the approval process is ongoing. If the City agrees that this new application will be duly considered without any assertion that the denial of BLD2021-03844 precludes or otherwise adversely impacts the relocation request under the second application, ROA is willing to dismiss this appeal.

From: Paterson, Joel <joel.paterson@slcgov.com>
Sent: Friday, May 28, 2021 3:43 PM
To: Victoria Lara <Victoria@reaganusa.com>
Cc: Michelsen, Alan <Alan.Michelsen@slcgov.com>; Gilcrease, Heather <Heather.Gilcrease@slcgov.com>; Thompson, Amy <Amy.Thompson@slcgov.com>; Slark, Samantha <Samantha.Slark@slcgov.com>
Subject: Proposed New Billboard at 938 N 900 W (BLD2021-03844)

Victoria,

I have notified the Building Services Division that the billboard permit request for a new billboard at 938 N 900 West (BLD2021-03844) cannot be issued under Salt Lake City's billboard regulations found in City Code section 21A.46.160.N which prohibits new billboards within 600 feet of a gateway. The proposed location of the billboard is on a parcel that abuts Interstate 15, which is identified as a gateway in City Code section 21A.46.160.B. This e-mail is intended to serve notice of final administrative decision denying this permit.

You can appeal this final administrative decision 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.

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 June 7, 2021.

I understand that on May 24, 2021, you informed Building Services that you would like Salt Lake City to review the relocation of the existing billboard under Utah Code 10-9a-513. To do this, you will need to submit a new application to the Building Services division and clearly state that the proposed new billboard is being requested under state law.

If you have any questions regarding this determination or submitting a new application, please contact me or Alan Michelsen.

Thank you,

JOEL PATERSON, AICP
Zoning Administrator
Planning Division

DEPARTMENT of COMMUNITY and NEIGHBORHOODS
SALT LAKE CITY CORPORATION

TEL 801-535-6141
CEL 801-808-2028
EMAIL joel.paterson@slcgov.com

www.SLC.GOV/PLANNING
www.ourneighborhoodscan.com

ATTACHMENT B: SALT LAKE CITY RESPONSE TO APPEAL

ADMINISTRATIVE HEARING OF A LAND USE APPEAL
(Case Nos. BLD2021-03844 and PLNAPP-2021-00587)

(December 2, 2021)

Appellant: Reagan Outdoor Advertising

Decision Making Entity: Zoning Administrator

Request: Appealing the City’s denial of a request to construct/relocate a billboard from 938 North 900 West to 912 North 900 West

Brief Prepared by: Samantha Slark, Senior City Attorney

Reagan does not appear to dispute the fact that Salt Lake City Code § 21A.46.160N precludes its application to relocate a billboard from 938 N 900W, Salt Lake City to 912 N 900 W, Salt Lake City. Rather, Reagan contends: (1) Utah Code § 10-9a-513 supersedes Salt Lake City Code § 21A.46.160N and the application should have been permitted under that provision; and (2) this appeal is moot if the City will process its newly filed application seeking relocation under provisions of state code.

This appeal should be dismissed for two reasons. First, Reagan’s argument is that the zoning officer’s decision is an error in the application, administration, or enforcement of a provision of state law. Salt Lake City Code makes clear, its hearing officers do not have authority to make determinations regarding the application of state law: “**The appeals hearing officer shall not hear and decide or make determinations regarding . . . Appeals alleging an error in the application, administration, enforcement or compliance with a provision of state law, including but not limited to provisions of state** and federal **statutes**, state and federal constitutions and state and federal common law.” Salt Lake City Code 21A.16.010B. Rather, such appeals “must be made directly to the district court.” *Id.*

Second, Reagan essentially concedes this appeal is moot because it has filed a subsequent application requesting the City allow the relocation under the provision of state law it contends applies. The zoning administrator responded to that request on November 1, 2021 and is awaiting supplemental information from Reagan to continue consideration of whether it meets the requirements of the provision of state code Reagan relies on. *See* Exhibit 1.

CONCLUSION

The hearing officer should dismiss this appeal because it does not have authority to consider appeals that allege errors in the application of state law. Moreover, Reagan admits the appeal is moot.

ERIN MENDENHALL
Mayor



DEPARTMENT of COMMUNITY
and NEIGHBORHOODS
PLANNING DIVISION

November 1, 2021

VIA Email to: Victoria@reaganusa.com

Reagan Outdoor Advertising
1775 North Warm Springs Road
Salt Lake City, Utah 84116
Attn: Victoria Lara

Re: BLD2021-03844 – Request to Relocate Billboard from 938 North 900 West to 912 North 900 West.

Dear Victoria Lara,

We are in receipt of Reagan Outdoor Advertising’s (“Reagan”) application filed pursuant to Utah Code Section 10-9a-511(3)(c), which requests the City waive its ordinances and issue permits to allow relocation of a billboard from 938 North 900 West to 912 North 900 West. As you are likely aware, the proposed relocation is contrary to at least two provision of City Code, including but not limited to the general prohibition on the relocation of billboards within Salt Lake City, except through use of the City’s billboard bank, and the specific prohibition on the construction of billboards on roads the City has designated as “gateways.” See Salt Lake City Code § 21A.46.160N & CC. The City has the discretion to waive these ordinances. Utah Code §10-9a-511(3)(c). See also *Outfront Media, LLC v. Salt Lake City Corp.*, 2017 UT 74, ¶¶ 13-39, 416 P.3d 389.

However, the proposed relocation also violates a provision of State Code that the City has no discretion to waive. Specifically, the proposed new location is within 500 feet of a freeway on-ramp, which is in violation of Utah Code 72-7-505(c). If Reagan can provide the City written confirmation from UDOT that the proposed relocation does in fact meet the spacing requirements of Utah Code § 72-7-505 or provide proof of a valid UDOT permit for the new location, the City is happy to continue processing Reagan’s request that the City waive its ordinances under § 10-9a-511(3)(c).

Please note that, as it stands, the application does not currently meet the requirements of Utah Code § 10-9a-513(2)(b)(iv)(B) because it does not comply with Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act, and the City is not required to file a condemnation action to decline to waive its ordinances. We look forward to receiving the above requested information.

Sincerely,

Joel G. Paterson

Joel Paterson, AICP
Zoning Administrator