

2016

Outfront Media, LLC, Fka Cbs Outdoor, Plaintiff/ Appellant, v. Salt Lake City Corporation; Corner Property, l.c.; And Utah Outdoor Advertising, Defendants/Appellees.

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca3



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah.

Recommended Citation

Brief of Appellee, *Outfront Media v SLC Corporation e*, No. 20160150 (Utah Court of Appeals, 2016).
https://digitalcommons.law.byu.edu/byu_ca3/3676

This Brief of Appellee is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs (2007–) by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

OUTFRONT MEDIA, LLC, fka
CBS OUTDOOR,

Plaintiff/Appellant,

v.

SALT LAKE CITY CORPORATION;
CORNER PROPERTY, L.C.; AND
UTAH OUTDOOR ADVERTISING,

Defendants/Appellees.

**BRIEF OF APPELLEE
SALT LAKE CITY CORPORATION**

Appeal No. 2016-0150-CA

On Appeal from the Third District Court
District Case No. 160900413

Leslie Van Frank
Bradley M. Strassberg
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
leslie@cohnekinghorn.com
bstrassberg@cohnekinghorn.com

*Attorneys for Plaintiff/Appellant
Outfront Media, LLC fka CBS Outdoor*

Jon H. Rogers,
825 North 300 West, Suite N144
Northgate Business Center
Salt Lake City, UT 84103
rogersconsumerlaw@gmail.com

*Attorney for Defendant/Appellee Corner
Property, L.C. and Utah Outdoor
Advertising*

Samantha J. Slark (10774)
Katherine N. Lewis (11703)
SALT LAKE CITY CORPORATION
451 South State Street, Room 505A
P.O. Box 145478
Salt Lake City, UT 84114-5478
Telephone: (801) 535-7788
Samantha.Slark@slcgov.com
Katherine.Lewis@slcgov.com

*Attorneys for Defendant/Appellee Salt
Lake City Corporation*

FILED
UTAH APPELLATE COURTS

AUG 15 2016

IN THE UTAH COURT OF APPEALS

OUTFRONT MEDIA, LLC, fka
CBS OUTDOOR,

Plaintiff/Appellant,

v.

SALT LAKE CITY CORPORATION;
CORNER PROPERTY, L.C.; AND
UTAH OUTDOOR ADVERTISING,

Defendants/Appellees.

**BRIEF OF APPELLEE
SALT LAKE CITY CORPORATION**

Appeal No. 2016-0150-CA

On Appeal from the Third District Court
District Case No. 160900413

Leslie Van Frank
Bradley M. Strassberg
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111
leslie@cohnekinghorn.com
bstrassberg@cohnekinghorn.com

*Attorneys for Plaintiff/Appellant
Outfront Media, LLC fka CBS Outdoor*

Jon H. Rogers,
825 North 300 West, Suite N144
Northgate Business Center
Salt Lake City, UT 84103
rogersconsumerlaw@gmail.com

*Attorney for Defendant/Appellee Corner
Property, L.C. and Utah Outdoor
Advertising*

Samantha J. Slark (10774)
Katherine N. Lewis (11703)
SALT LAKE CITY CORPORATION
451 South State Street, Room 505A
P.O. Box 145478
Salt Lake City, UT 84114-5478
Telephone: (801) 535-7788
Samantha.Slark@slcgov.com
Katherine.Lewis@slcgov.com

*Attorneys for Defendant/Appellee Salt
Lake City Corporation*

TABLE OF CONTENTS

JURISDICTION.....	1
STATEMENT OF ISSUES AND STANDARD OF REVIEW	1
CONSTITUTIONAL OR STATUTORY PROVISIONS	3
STATEMENT OF CASE.....	3
STATEMENT OF FACTS	6
A. Salt Lake City’s Billboard Ordinance and the Billboard Banking System. ..	6
B. CBS’s First Application to Relocate its Billboard and the Demolition of its Billboard.	7
C. CBS’s Amended Application to Relocate its Billboard and Corner Property’s Application to Relocate its 500 South Billboard.	9
D. The City’s Decisions.....	9
E. CBS’s Appeal of the City’s Decisions.....	10
SUMMARY OF ARGUMENT	11
ARGUMENT	13
I. THE STANDARD OF REVIEW AND THE DECISIONS SUBJECT TO THAT REVIEW.	13
A. The Applicable Standard of Review.	13
B. The Decisions Subject to Review by this Court.....	14
II. THE CITY’S DENIAL OF CBS’S APPLICATION TO RELOCATE A DEMOLISHED BILLBOARD WAS NOT ARBITRARY, CAPRICIOUS OR ILLEGAL.....	18
A. The Mayor can make a Decision to Deny a Section 511 Application.....	18
1. Waiving or not Waiving an Ordinance is an Administrative Decision.	18
2. Approval of the City Council is not Required when a Municipality Denies a Section 511 Application.....	19

i.	Section 511 and section 513 do not incorporate the Eminent Domain Statute and its condemnation process.	20
ii.	Legislative history demonstrates sections 511 and 513 do not incorporate the Eminent Domain Statute and its condemnation process.....	22
iii.	Sections 511 and 513 do not incorporate the Eminent Domain Statute and its condemnation process because the statutes are not in pari materia.	23
iv.	Section 511 and 513 do not incorporate the Eminent Domain Statute and its condemnation process because it is absurd to impose that process in a regulatory taking action.....	25
v.	Section 511 and 513 do not incorporate the Eminent Domain Statute and its condemnation process because it would allow a billboard owner to prevent a municipality from denying a section 511 application.	27
vi.	Section 512 does not show sections 511 and 513 incorporate the Eminent Domain Statute and the Condemnation Process.....	29
vii.	The City Council's role in appropriating funds does not show the City Council is required to approve the Mayor's decision to deny CBS's application.	30
B.	Section 21A.46.160CC does not Preclude the Denial of CBS's Application.....	32
C.	The City's Denial of CBS's Application is Supported by Substantial Evidence.....	35
III.	THE CITY'S APPROVAL OF CORNER PROPERTY'S APPLICATION WAS NOT ARBITRARY, CAPRICIOUS OR ILLEGAL.....	39
A.	The City Can Waive its Ordinances to Permit Relocation of Corner Property's Billboard.....	39
B.	The City's Approval of Corner Property's Application is Supported by Substantial Evidence.....	42
	CONCLUSION	44

TABLE OF AUTHORITIES

Cases

<i>2 Ton Plumbing, L.L.C. v. Thorgaard</i> , 2015 UT 29, 345 P.3d 675	2
<i>Anadarko Petroleum Corp. v. Utah State Tax Comm'n</i> , 2015 UT 25, 345 P.3d 648.....	20
<i>Biddle v. Washington Terrace City</i> , 1999 UT 110, 993 P.2d 875	33
<i>Bradley v. Payson City Corp.</i> , 2003 UT 16, 70 P.3d 47	1
<i>Carlsen v. Bd. of Adjustment of City of Smithfield</i> , 2012 UT App 260, 287 P.3d 440..	1, 2, 14, 35
<i>Carrier v. Salt Lake County</i> , 2004 UT 98, 104 P.3d 1208	2, 32, 33
<i>Cornish Town v. Koller</i> , 817 P.2d 305 (Utah 1991)	25
<i>Encon Utah, LLC v. Fluor Ames Kraemer, LLC</i> , 2009 UT 7, 210 P.3d 263	25
<i>Evans v. Utah</i> , 963 P.2d 177 (Utah 1998)	33
<i>Floyd v. W. Surgical Associates, Inc.</i> , 773 P.2d 401 (Utah Ct. App. 1989)	20
<i>Hanchett v. Burbidge</i> , 202 P. 377 (1921)	20
<i>Hansen v. Eyre</i> , 2005 UT 29, 116 P.3d 290.....	32
<i>Hogs R Us v. Town of Fairfield</i> , 2009 UT 21, 207 P.3d 1221	17
<i>J.J.W. v. State, Div. of Child & Family Servs.</i> , 2001 UT App 271, 33 P.3d 59	23, 24
<i>Marion Energy, Inc. v. KFJ Ranch P'ship</i> , 2011 UT 50, 267 P.3d 863	21
<i>Martindale v. Anderson</i> , 581 P.2d 1022 (Utah 1978).....	19
<i>Nat'l Parks & Conservation Ass'n v. Bd. of State Lands</i> , 869 P.2d 909 (Utah 1993).....	25
<i>Nelson v. Salt Lake Cnty.</i> , 905 P.2d 872 (Utah 1995)	20
<i>Patterson v. Utah Cty. Bd. of Adjustment</i> , 893 P.2d 602 (Utah Ct. App. 1995).....	2, 35
<i>Pledger v. Cox</i> , 626 P.2d 415 (Utah 1981)	16
<i>Salt Lake Child & Family Therapy Clinic, Inc. v. Frederick</i> , 890 P.2d 1017 (Utah 1995)	20

<i>Salt Lake City v. Kusse</i> , 93 P.2d 671 (1938).....	32
<i>Salt Lake City v. ROA General Inc. dba Reagan Outdoor Advertising</i> , District Court No. 100910552, Appellate No. 2015-0608-CA.....	28, 29, 34, 37
<i>Scherbel v. Salt Lake City Corp.</i> , 758 P.2d 897 (Utah 1988)	19
<i>State ex rel. Z.C.</i> , 2007 UT 54, 165 P.3d 1206	25
<i>Tolman v. Logan City</i> , 2007 UT App 260, 167 P.3d 489	25
<i>Utah County v. Orem City</i> , 699 P.2d 707 (Utah 1985).....	23
<i>Wilson v. Valley Mental Health</i> , 969 P.2d 416 (Utah 1998).....	22

Statutes

Salt Lake City Code § 21.46.030	3
Salt Lake City Code § 21A.16.010	15
Salt Lake City Code § 21A.16.010-050	3
Salt Lake City Code § 21A.46.160	3-4, 6, 7, 9, 12, 16, 18, 32-34, 36
Utah Code § 10-3b-202	38
Utah Code § 10-9a-202	31
Utah Code § 10-9a-203	30
Utah Code § 10-9a-511	3-4, 9, 11-13, 15, 18-32, 35, 38-41
Utah Code § 10-9a-512	29
Utah Code § 10-9a-513	3, 12, 20-31, 42
Utah Code § 10-9a-701	3, 14
Utah Code § 10-9a-703	3, 15
Utah Code § 10-9a-704	3
Utah Code § 10-9a-705	3
Utah Code § 10-9a-707	3, 14, 15

Utah Code § 10-9a-801	1-3, 5, 13
Utah Code § 57-12-13	28
Utah Code § 72-7-505	4, 9
Utah Code § 72-7-510.5	8, 40-41
Utah Code § 72-7-516	34
Utah Code § 78A-3-102	1
Utah Code § 78B-6-501	11, 19
Utah Code § 78B-6-504	26, 27
Utah Code § 78B-6-505	27

Rules

Utah R. App. P. 24(a)(6)	3
Utah R. App. P. 44	1

JURISDICTION

This Court does not have original appellate jurisdiction over this matter because it is an appeal from a district court's review of a land use decision by a municipality. *Bradley v. Payson City Corp.*, 2003 UT 16, ¶¶ 32-35 & 37, 70 P.3d 47 (finding the court of appeals does not have original jurisdiction to hear challenges to land use decisions by local government entities). This appeal should have been filed with the Utah Supreme Court pursuant to Utah Code § 78A-3-102(j), subject to transfer to this Court under Utah Code § 78A-3-102(4). *Id.* This matter and all briefing to date should be transferred to the Utah Supreme Court, as provided for in Rule 44 of the Utah Rules of Appellate Procedure, for the Supreme Court to determine if it will retain jurisdiction or transfer jurisdiction to this Court. *See* Motion to Transfer to Utah Supreme Court, which was filed on August 12, 2016.

STATEMENT OF ISSUES AND STANDARD OF REVIEW

ISSUE: Was Salt Lake City's denial of CBS's application to relocate its already demolished billboard arbitrary, capricious or illegal?

STANDARD OF REVIEW: Courts presume a land use decision is valid and determine only whether or not the decision is arbitrary, capricious, or illegal. Utah Code § 10-9a-801(3)(a). *See also Carlsen v. Bd. of Adjustment of City of Smithfield*, 2012 UT App 260, ¶ 4, 287 P.3d 440 (quoting Utah Code § 10-9a-801(3)(a)) ("In reviewing a municipality's land use decision, '[t]he courts shall . . . presume that a decision . . . is valid' and shall 'determine only whether or not the decision . . . is arbitrary, capricious, or illegal.'") A decision is illegal if it "violates a law, statute, or ordinance in effect at the

time the decision was made.” Utah Code § 10-9a-801(3)(d). *See also Carlsen*, 2012 UT App 260 ¶ 4 (quoting *Patterson v. Utah Cty. Bd. of Adjustment*, 893 P.2d 602, 604 (Utah Ct. App. 1995)) (“[d]etermination of whether such a decision ‘is illegal depends on a proper interpretation and application of the law.’”). This court reviews interpretations of relevant statutory provisions for correctness giving no deference to a lower tribunal.

2 Ton Plumbing, L.L.C. v. Thorgaard, 2015 UT 29, ¶ 17, 345 P.3d 675. It also reviews interpretations of relevant ordinances for correctness, but some deference is given to the interpretation of the ordinance advanced by the agency. *Carrier v. Salt Lake County*, 2004 UT 98, ¶ 28, 104 P.3d 1208. Thus, in determining whether the decision was illegal because it violated state law, this Court reviews the decision for correctness. In determining whether the decision was illegal because it violated provisions of Salt Lake City Code, this Court reviews the decision for correctness giving some deference to Salt Lake City’s interpretation of its own ordinance.

Administrative decisions are not arbitrary and capricious if they are supported by substantial evidence. *Carlsen*, 2012 UT App. 260, ¶ 4. *See also* Utah Code § 10-9a-801(3)(c). This Court is limited to the record before the decision making body and reviews that evidence to determine if there is substantial evidence in the record to support the decision. *Carlsen*, 2012 UT App. 260, ¶ 5. It is not the prerogative of this Court to weigh the evidence anew. *Id.* Rather, this Court must simply determine, in light of the evidence before the decision making body, whether a reasonable mind could reach the same conclusion as that body. *Id.*

PRESERVATION: CBS appealed the denial of its application to Salt Lake City's appeal authority and then filed a petition with the district court claiming the decision was arbitrary, capricious and illegal. (R. 0001-0746.)

ISSUE: Was Salt Lake City's approval of Corner Property's application to relocate its billboard arbitrary, capricious or illegal.

STANDARD OF REVIEW: The standards of review set forth above also apply to this issue.

PRESERVATION: CBS appealed the approval of Corner Property's application to Salt Lake City's appeal authority and then filed a petition with the district court claiming the decision was arbitrary, capricious and illegal. (R. 0001-0746.)

CONSTITUTIONAL OR STATUTORY PROVISIONS

Utah Code § 10-9a-511(3)(c), Utah Code § 10-9a-513(2)(a)(iv), Utah Code § 10-9a-701, Utah Code § 10-9a-707, Salt Lake City Code §§ 21A.16.010-050, and Salt Lake City Code § 21A.46.160. These provisions are set forth in the addendum to this brief as provided for in Rule 24(a)(6) of the Utah Rules of Appellate Procedure.

STATEMENT OF CASE

To construct a billboard in Salt Lake City, a billboard company must obtain a permit from the City. *See* Salt Lake City Code § 21.46.030. This case is about the City's decision¹ to grant one billboard company a permit and deny another billboard company a

¹ The Utah Municipal Code contemplates review of decisions made by a "land use authority." *See e.g.*, Utah Code § 10-9a-703(1), Utah Code § 10-9a-704(1)-(2), Utah Code § 10-9a-705, Utah Code § 10-9a-707(1), (3) & (4), Utah Code § 10-9a-801(1). In Salt Lake City, the "land use authority" may be the planning commission, the historic

permit. Specifically, Outfront Media, LLC, fka CBS Outdoor (“CBS”) filed an application requesting a permit to allow relocation of an already demolished billboard from 726 West South Temple to 738 West South Temple. (R. 0746, SLCC 000018-22; SLCC 001473.) Corner Property, LLC (“Corner Property”) filed an application for permits to allow relocation of a billboard from 280 West 500 South to 726 West South Temple. (R. 0746, SLCC 001474-1526.) Salt Lake City’s zoning ordinance precludes the City from issuing permits for relocation of either billboard. *See* Salt Lake City Code § 21A.46.160.² However, a provision of the Utah State Code allows (but does not require) a municipality to waive its zoning ordinance to permit relocation of a billboard that would otherwise be prohibited by a municipality’s zoning ordinance. *See* Utah Code § 10-9a-511(3)(c)(i). Accordingly, CBS and Corner Property filed applications requesting permits under that provision of the Utah State Code. (R. 0746, SLCC 001473, SLCC 001474-1526.)

The City could not grant both applications because another provision of the Utah State Code sets forth minimum spacing requirements for billboards that face a freeway. *See* Utah Code § 72-7-505(3). CBS and Corner Property proposed relocation of billboards to front I-15 and the proposed locations placed the billboards well within that minimum spacing requirement. The Mayor elected to waive the provisions of Salt Lake

landmark commission, the zoning administrator, or another member of the City’s administration, depending on the land use decision at issue. In this case the “land use authority” was Mayor Becker and the Becker administration. Hereinafter, the term “City’s decision” will refer to that body and the decision made by that body.

² A copy of Salt Lake City Code § 21A.46.160 is included in the Addendum hereto.

City's zoning ordinance with respect to Corner Property's application and approved that application and denied CBS's application. (R. 0746, SLCC 001542 SLCC 001544.) This decision was made because the Becker administration had a long standing goal of reducing the number of billboards in Salt Lake City and retiring billboards when the opportunity arose. (R. 0746, SLCC 01538, ¶ 2; R. 472-74 (citing R. 0746, SLCC 001528-40, 1568-70, 1572-77, 1579-87, 1589-1622).) Granting Corner Property's application and denying CBS's application furthered this well-established goal because it reduced the total number of billboards in the City by one and removed a billboard from 500 South, a critical "gateway" into the City. (R.0746, SLCC 01539, ¶¶ 6-7; R. 0746, SLCC 002234 (lines 1070-1150).) Approving CBS's application and denying Corner Property's application would not achieve that result — the total number of billboards in Salt Lake City would remain the same. *See infra* § III, B. (Because CBS had already demolished its billboard.)

CBS appealed that decision to the City's appeal authority — a hearing officer — claiming the City's decisions violated provisions of the Utah Code. (R. 0746, SLCC 000203-000216.) The City took the position that the hearing officer did not have jurisdiction to determine issues of state law and, thus, could not consider CBS's arguments that the City's decision violated state law. (R. 0746, SLCC 001404-1406; SLCC 002259-002260 (lines 494-517).) The hearing officer disagreed and issued an opinion affirming the City's decisions, which set forth the hearing officer's interpretation of provisions of the Utah Code and state law. (R. 0746, SLCC 001893-1903.) CBS then filed a petition for judicial review with the district court, pursuant to Utah Code § 10-9a-801, claiming the City's decisions were arbitrary, capricious and illegal. (R. 0001-8.)

The district court rejected CBS's arguments that the City's decisions were illegal because they violated provisions of the Utah and Salt Lake City codes, finding the provisions CBS relied on were inapplicable or disagreeing with CBS's interpretation of those provisions. (R. 0550-68.) The district court also considered CBS's arguments that the decisions were arbitrary and capricious and found that they were not because there was substantial evidence in the record to support the City's decisions. (R. 0550-68.) CBS brings this appeal seeking a determination from this Court that the City's decisions were arbitrary, capricious or illegal.

STATEMENT OF FACTS

A. Salt Lake City's Billboard Ordinance and the Billboard Banking System.

Section 21A.46.160 of the Salt Lake City Code (the "Billboard Ordinance")³ regulates the construction and demolition of billboards in Salt Lake City limits. The Billboard Ordinance states its purpose is to "limit the maximum number of billboards in Salt Lake City to no greater than the current number." Salt Lake City Code § 21A.46.160(A). It further states that its purpose is to provide "reasonable processes and methods for the replacement or relocation of existing non-conforming 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 § 21A.46.160(A). The "reasonable processes and methods" referenced is the "billboard banking" system

³ See *supra* n.2.

that is established by the Billboard Ordinance. *See generally* Salt Lake City Code § 21A.46.160.

Under the billboard banking system, if a billboard owner voluntarily demolishes a billboard, the billboard owner may “bank” credits for that billboard in the billboard bank and use those credits to construct a new billboard in certain designated areas of the City where billboards are a permitted use. Salt Lake City Code § 21A.46.160(E)-(I). The Billboard Ordinance limits construction of new billboards to construction under this system. Salt Lake City Code § 21A.46.160(J). It also precludes construction of a new billboard within 600 feet of a road that is defined by the Billboard Ordinance as a “gateway.” Salt Lake City Code § 21A.46.160(N). I-15 is defined by the Billboard Ordinance as a “gateway.” Salt Lake City Code § 21A.46.160(B)(3). The Billboard Ordinance requires a billboard company to obtain a permit from the City to either demolish a billboard or to construct a new billboard. Salt Lake City Code § 21A.46.160(D) & (L).

B. CBS’s First Application to Relocate its Billboard and the Demolition of its Billboard.

In October 2014, CBS owned a billboard that was located at approximately 726 West South Temple, Salt Lake City, Utah. (R. 0746, SLCC 001438-42.) The billboard was located on land owned by Corner Property. (R. 0746, SLCC 001860-70.) The lease was set to expire on September 1, 2014. (R. 0746, SLCC 001860-70.) On October 20, 2014, CBS submitted an application to the City for a permit that would allow it to move the billboard from 726 West South Temple to 738 West South Temple and to raise the

height of the billboard from its current height of 86 feet to 116 feet. (R. 0746, SLCC 000018-22.) CBS submitted that application pursuant to Utah Code § 72-7-510.5 because several provisions of the Salt Lake City Code governing construction or relocation of billboards preclude the relocation requested. (R. 0746, SLCC 000018-22.)

Shortly after filing that application to relocate, CBS demolished the billboard at 726 West South Temple because CBS's land lease had expired and the landowner, Corner Property, had provided CBS notice to vacate the property. (R. 0746, SLCC 001860-70; SLCC 002217 (lines 553-557).) On December 4, 2014, the City denied CBS's application because Utah Code § 72-7-510.5 does not allow a billboard owner to both relocate and raise the height of a billboard. (R. 0746, SLCC 001444-52.) CBS attempted to appeal the decision to a City hearing officer, but the City informed CBS that its hearing officers do not have jurisdiction to interpret issues of state law. (R. 0746, SLCC 001470-71.) On January 2, 2015, CBS filed a petition for judicial review claiming that it had the right under Utah Code § 72-7-510.5 to relocate and raise the height of the billboard. (R. 0453, ¶ 17 citing *Outfront Media f/k/a/ CBS Outdoor v. Salt Lake City Corp.*, Case No. 150900004.) At the same time CBS sought and obtained a preliminary injunction precluding the City from processing any other application for construction of a billboard at the 738 West South Temple location or any location within 500 feet. (R. 0453, ¶ 18.) On August 18, 2015, the court affirmed the City's denial of CBS's application finding Utah Code § 72-7-510.5 does not give a billboard owner the right to both move and raise the height of a billboard that otherwise qualifies for relocation under that statute. (R. 0453-54, ¶ 19.)

C. CBS's Amended Application to Relocate its Billboard and Corner Property's Application to Relocate its 500 South Billboard.

Approximately one month later, CBS modified its application to request relocation of its demolished billboard under Utah Code § 10-9a-511(3)(c)(i). (R. 0746, SLCC 001473.) During the same period of time, the City was processing an application from Corner Property to demolish a billboard located at 280 West 500 South and relocate that billboard to 726 West South Temple, where the CBS billboard was previously located. (R. 0746, SLCC 001474-1526.) Corner Property's application was also made pursuant to Utah Code § 10-9a-511(3)(c)(i).

D. The City's Decisions.

Both CBS and Corner Property's applications are precluded by provisions of Salt Lake City's zoning ordinance. *See e.g.*, Salt Lake City Code § 21A.46.160(N). Utah Code § 10-9a-511(3)(c)(i) provides a municipality the discretion to waive its zoning ordinance and approve an application to relocate a billboard where its zoning ordinance would otherwise preclude the application. Mayor Becker considered both applications. He could not approve both requests because a provision of the Utah State Code (which the City cannot waive) states billboards adjacent to interstate highways may not be within 500 feet of each other. Utah Code § 72-7-505(3). The requested relocations (if granted) would place two billboards adjacent to I-15 well within that 500 feet restriction. (R. 0746, SLCC 01539, ¶¶ 3-5. *See also* R.0746, SLCC 001473-1526.) Thus, consistent with the City's goal of reducing the total number of billboards in the City, the Mayor authorized the denial of CBS's application and the approval of Corner Property's

application. (R. 0746, SLCC 001538-001542.) This decision was made because it would result in the net reduction of total billboards within the City and the removal of a billboard from 500 South. (R. 0746, SLCC 001539, ¶¶ 6-7.)

On November 25, 2015, the City sent CBS a letter stating it was denying CBS's application pursuant to its "longstanding policy in favor of retiring and removing billboards as the opportunity to do so arises." (R. 0746, SLCC 001542) The same day, the City sent Corner Property notification stating the City was approving its request to relocate its 500 South billboard to 726 West South Temple. (R. 0746, SLCC 001544.) The City and Corner Property executed a Billboard Relocation Agreement memorializing the terms by which Corner Property was allowed to relocate the 500 South billboard. (R. 0746, SLCC 001546-48).

E. CBS's Appeal of the City's Decisions.

CBS pursued an appeal before the City's appeal authority — a hearing officer — claiming the City's denial of its application and the approval of Corner Property's application were contrary to provisions of the Utah Code and arbitrary and capricious. (R. 0746, SLCC 000203-000216.) The City argued to the hearing officer that he did not have jurisdiction to consider CBS's arguments that the City's decisions were contrary to provisions of state law and that he must limit his decisions to determining if the City's decision violated the City's zoning ordinance. (R. 0746, SLCC 001404-1406; SLCC 002259-002260 (lines 494-517).) On January 15, 2016, the hearing officer issued an opinion affirming the City's decisions, which decision included the hearing officer's interpretation of state law. (R. 0746, SLCC 001893-1903.) CBS appealed that decision

to the district court. (R. 550-568.) The district court found the City's hearing officer did not have jurisdiction to decide issues of state law, gave no deference to the hearing officer's ruling on those issues, and found the City's decisions were not arbitrary, capricious, or illegal. (R. 550-568.) CBS appeals that decision to this Court.

SUMMARY OF ARGUMENT

CBS asks this Court to review two City decisions: (1) the Mayor's decision to deny CBS's section 511 application to relocate its demolished 726 West South Temple billboard, and (2) the Mayor's decision to approve Corner Property's section 511 application to relocate its 500 South billboard. The decisions are not arbitrary, capricious or illegal and should be upheld.

With respect to the first City decision, the denial of CBS's application was not illegal. The Mayor, as the City's chief administrator, has authority to make administrative decisions on behalf of the City and the grant or denial of an application for billboard permits made under section 511 of the Utah Municipal Code, Utah Code § 10-9a-511, is an administrative decision.

CBS contends the City Council is required to approve the Mayor's decision because a provision of the Eminent Domain Statute, Utah Code § 78B-6-501 *et. seq.*, requires the City Council to approve the exercise of the powers of eminent domain conferred by that statute. That provision does not apply because the City is not exercising a power of eminent domain under the Eminent Domain Statute and the provisions of that statute do not apply to the denial of an application for a billboard permit made pursuant to section 511 of the Utah Municipal Code.

Specifically, sections 511 and 513 are contained in the Utah Municipal Code and set forth the statutory scheme that governs the applications at issue in this case. Those provisions do not state that the statutory scheme created by sections 511 and 513 incorporate the Eminent Domain Statute and the condemnation process set forth in that statute. Legislative history also demonstrates that it was not the intent of the legislature to incorporate the Eminent Domain Statute and the condemnation process set forth in that statute into the section 511 statutory scheme. Reading sections 511 and 513 as incorporating the requirements of the Eminent Domain Statute and its condemnation process is also absurd because it would impose the process in a regulatory taking action where the process is completely inapplicable and difficult, if not impossible, to complete. It would also enable billboard companies to prevent a municipality from denying a section 511 application, an absurd result where the plain language of the statute gives municipalities that choice.

The Court should also reject CBS's alternative argument that the City's denial of its application is illegal because section 21A.46.160CC of the Salt Lake City Code precludes the City from denying applications to relocate billboards where just compensation is owed for the denial. Interpreting section 21A.46.160CC as CBS suggests reads section 21A.46.160CC in conflict with the plain language of section 511. Where state and city code conflict, state code prevails. Moreover, the plain language and legislative history of section 21A.46.160CC do not support CBS's interpretation of that provision and the City has never interpreted that provision as precluding the City from making such denials.

Likewise, the denial of CBS's application is not arbitrary and capricious because it furthered the City's goal of reducing the total number of billboards in the Salt Lake City limits. CBS's claim that the City has no policy, goal or objective of reducing billboards in the City limits lacks merit because the record is replete with examples of that goal of the Becker administration and a policy, objective or goal of an administration does not need to be passed by the City Council to be valid, as CBS contends.

With respect to the second City decision, the approval of Corner Property's application is not illegal because section 511 allows the City to waive its ordinances to permit that relocation. Likewise, the decision is not arbitrary and capricious because denying CBS's application and approving Corner Property's application furthered the City's goal of reducing the total number of billboards in the City limits and removed a billboard from 500 South, a critical gateway to the City.

ARGUMENT

I. THE STANDARD OF REVIEW AND THE DECISIONS SUBJECT TO THAT REVIEW.

A. The Applicable Standard of Review.

When reviewing administrative decisions a court must "presume that a decision . . . made under the authority of [Title 10, Chapter 9a] is valid; and . . . determine only whether or not the decision . . . is arbitrary, capricious, or illegal." Utah Code § 10-9a-801(3)(a)(i)-(ii). A decision is illegal if "the decision . . . violates a law, statute, or ordinance in effect at the time the decision was made" Utah Code § 10-9a-801(3)(d). A decision is arbitrary and capricious if the decision is not supported by substantial

evidence in the record. *Carlsen v. Bd. of Adjustment of City of Smithfield*, 2012 UT App 260, ¶ 4, 287 P.3d 440.

B. The Decisions Subject to Review by this Court.

CBS incorrectly identifies the hearing officer's ruling, not the Mayor's decisions, as the administrative decision at issue and the subject of review in this case. Municipalities are charged by statute with the responsibility of establishing an appeal authority to "hear and decide . . . appeals from decisions applying the [municipality's] land use ordinances." Utah Code § 10-9a-701(1)(b). In the vast majority of cases, an appeal authority is charged with nothing more than determining whether the land use authority's decision violates a law, statute or ordinance or was not supported by substantial evidence.⁴ As such, the appeal authority performs the same review as a district court in a petition for judicial review or an appellate court on an appeal from that decision and its ruling is no more the administrative decision at issue than the ruling of the district court or a ruling of this Court. In some circumstances an appeal authority may actually hear testimony, weigh evidence, and is charged with remaking the

⁴ See e.g., Utah Code § 10-9a-701(3)(a)(i)-(ii) (stating an appeal authority acts in a "quasi-judicial manner" and "serve[s] as the final arbiter of issues involving the interpretation or application of land use ordinances"); Utah Code § 10-9a-707(3) (directing appeal authorities to "determine the correctness of a decision of the land use authority in its interpretation and application of a land use ordinance."); Salt Lake City Code § 21A.16.030(E) ("[a]n appeal from a decision of the historic landmark commission or planning commission shall be based on the record made below . . . [t]he appeals hearing officer shall uphold the decision unless it is not supported by substantial evidence in the record or it violates a law, statute, or ordinance in effect when the decision was made.")

administrative decision.⁵ Only in those rare circumstances is the appeal authority's ruling the administrative decision that is the subject of review.

The hearing officer's ruling is not the administrative decision at issue in this case for two reasons. One, the hearing officer did not have authority to issue a ruling on the issues raised in the administrative appeal. Two, the hearing officer's review was appellate in nature. A hearing officer's authority is specifically limited to considering a municipality's application of its land use ordinance. See Utah Code § 10-9a-707(4) ("*[o]nly those decisions in which a land use authority has applied a land use ordinance to a particular application, person, or parcel may be appealed to an appeal authority.*") (emphasis added); Utah Code § 10-9a-703(1) (limiting appeals to an appeal authority to claims "that there is error in any order, requirement, decision, or determination made by the land use authority *in the administration or interpretation of the land use ordinance.*"); Salt Lake City Code § 21A.16.010 ("the appeals hearing officer shall hear and decide appeals alleging an error in any administrative decision made by the zoning administrator or the administrative hearing officer *in the administration or enforcement of this title*, as well as administrative decisions of the historic landmark commission; and the planning commission.") (emphasis added). CBS's administrative appeal asked the hearing officer to interpret the language of Utah Code § 10-9a-511(3)(c) and find the

⁵ See e.g., Utah Code § 10-9a-707(1)-(2) (stating that factual matters are reviewed under the standard set by municipal ordinance and where no standard is set the appeal authority reviews the matter de novo); Salt Lake City Code § 21A.46.030(E)(1) ("[t]he standard of review for an appeal, other than as provided in subsection E2 of this section, 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.")

Mayor's decisions were not permitted by that and other provisions of the Utah Code. As the City argued to the hearing officer, a hearing officer is not an Article III judge and a district court, not a City hearing officer, must make the determinations CBS requested in its administrative appeal.⁶ (R. 0746, SLCC 001404-1406; SLCC 002259-002260 (lines 494-517).) Despite the City's arguments, the hearing officer issued a ruling approving the Mayor's decisions and setting forth his interpretation of section 511 and the applicability of the Eminent Domain Statute to that provision.⁷ (R. 0746, SLCC 001893-1903.)

Second, the hearing officer's review although designated as *de novo* was appropriately appellate in nature.⁸ *De novo* review literally means "anew, afresh, a second time." *Pledger v. Cox*, 626 P.2d 415, 416 (Utah 1981) (internal quotations omitted). "De novo" may mean a complete retrial upon new evidence or a trial upon the record made before the lower tribunal. *Id.* at 416. The meaning of "de novo" is "dictated by the wording and context of the statute in which it appears and by the nature of the administrative body, decision and procedure being reviewed." *Id.* at 416-17. A *de novo* review of a decision made pursuant to statutory authority granting the decision-maker

⁶ Notably, the issues CBS asked the hearing officer to rule on are also issues of first impression under Utah law.

⁷ A hearing officer has authority to interpret municipal land use ordinances, but the hearing officer did not reach a conclusion on the meaning of section 21A.46.160(CC) of the Salt Lake City Code because the hearing officer determined that state law "trumped" City ordinance and the state law permitted the City to waive that ordinance. (R. 0746, SLCC 001896-98.)

⁸ The hearing officer found he was required to conduct a *de novo* review in this case because the decision was not an appeal from a decision of the historic landmark commission or the planning commission. (R. 01984-95.) *See also* Salt Lake City Code § 21A.16.030(E), included in the Addendum.

discretion requires the court to determine if the statute provided the decision maker authority to make the decision and whether the decision made exceeds the bounds of reasonableness. *See e.g., Hogs R Us v. Town of Fairfield*, 2009 UT 21, 207 P.3d 1221.

For example, in *Hogs R Us*, 2009 UT 21, ¶¶ 2-6, the Utah Supreme Court was charged with determining whether the law required the Town of Fairfield to maintain a road the plaintiffs used to access their land under a de novo standard of review. Recognizing it is not the role of a court to substitute its decision for that of an elected official where a statute confers authority for the decision on the elected official, the court's de novo review consisted of a determination that the applicable statute gave the town complete discretion to decide how to improve roads and the common law did not otherwise impose a duty to maintain roads. *Id.*, ¶¶ 15-23.

To the extent the hearing officer had any authority to review the Mayor's decisions in this case he appropriately limited his de novo review to a determination of whether the statute afforded the Mayor discretion to make the decisions and whether the decisions exceeded the bounds of reasonableness.⁹ As such, the hearing officer's ruling

⁹ CBS argued the hearing officer's de novo review should extend to the hearing officer stepping into the shoes of the Mayor and substituting his decision for that of the Mayor. The hearing officer initially ruled that he believed his de novo review extended to considering matters of City policy and substituting his decision for that of the Mayor, if he felt it was appropriate. (R. 0746, SLCC 002225 (lines 793-813); SLCC 001398 ("The review is not limited to the facts and law but also to policy considerations which fall within the discretion of the City to consider in making the original decisions.")) The City assisted the hearing officer in understanding that his role, as a quasi-judicial officer, was to consider whether the decisions made were permitted by law, not to substitute his decision for that of the Mayor where the decision involves pure policy considerations. (R. 0746, SLCC 001405-06.) In his final decision, the hearing officer agreed with the City's position and appropriately limited his de novo review to a determination of

is appellate in nature and is essentially the same in scope as the review conducted by the district court and the review that will be conducted by this Court. (R. 0746, SLCC 01894-95.) The Mayor's decisions, not the hearing officer's review of those decisions, are the administrative decisions subject to review in this appeal.

II. THE CITY'S DENIAL OF CBS'S APPLICATION TO RELOCATE A DEMOLISHED BILLBOARD WAS NOT ARBITRARY, CAPRICIOUS OR ILLEGAL.

The City's denial of CBS's section 511 application requesting the City waive its zoning ordinance and allow CBS to relocate its demolished billboard was not arbitrary, capricious or illegal because (1) the Mayor can make a decision to deny a section 511 application; (2) section 21A.46.160(CC) of the Salt Lake City Code does not prevent the Mayor from making that decision, and (3) the decision is supported by substantial evidence.

A. The Mayor can make a Decision to Deny a Section 511 Application.

1. Waiving or not Waiving an Ordinance is an Administrative Decision.

Granting or denying an application brought under section 511 is an administrative decision that the Mayor has authority to make. Section 511(3)(c)(i) allows a municipality to waive (or not waive) its zoning ordinance to permit relocation of a billboard that is otherwise prohibited. Utah Code § 10-9a-511 (3)(c)(i). The subsection sets forth no factors or guidelines stating any circumstance under which a municipality must waive its

whether the statute afforded the Mayor authority to make the decisions and whether the decisions exceeded the bounds of reasonableness. (R. 0746, SLCC 001894-95.)

ordinance, but rather contemplates a negotiation between the parties and an agreement to a “mutually acceptable location.” *Id.* Thus, the decision to waive (or not waive) ordinances and permit relocation of billboards is left to the discretion of the municipality.

The Mayor, as Salt Lake City’s chief administrative officer, has the authority to exercise that discretion on behalf of the City. It is well established that in a council-mayor form of government the council is responsible for the passage of laws and the mayor and the administration are responsible for the enforcement of those laws. *Scherbel v. Salt Lake City Corp.*, 758 P.2d 897, 899 (Utah 1988) (quoting *Martindale v. Anderson*, 581 P.2d 1022, 1027 (Utah 1978) (“[l]egislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them or appoint the agents charged with the duty to make such enforcement. The latter are executive functions.”)). A decision to waive (or not waive) ordinances falls clearly within the powers afforded the administration because it is a decision to “enforce” or not to “enforce” provisions of zoning ordinances. A decision under section 511 falls squarely within the realm of the executive branch and it was appropriate for the Mayor to make the decision that the City was not going to waive its ordinances and deny CBS’s request to relocate its already demolished billboard.

2. Approval of the City Council is not Required when a Municipality Denies a Section 511 Application.

CBS claims the City’s denial of its application is illegal because the City Council must approve that denial. CBS’s argument relies on a provision of the Eminent Domain Statute, Utah Code § 78B-6-501 *et. seq.*, that requires approval from the City Council

when the City exercises the powers of eminent domain conferred by that statute. That provision does not apply because the City is not exercising a power of eminent domain under that statute and the provisions of the Eminent Domain Statute do not apply to decisions to deny applications for billboard permits made pursuant to section 511.

- i. *Section 511 and section 513 do not incorporate the Eminent Domain Statute and its condemnation process.*

Sections 511 and 513 are contained in the Utah Municipal Code and set forth the statutory scheme that governs the application at issue in this case. They do not state that the scheme incorporates the condemnation process set forth in the Eminent Domain Statute. See Utah Code §§ 10-9a-511 & 513. “When interpreting a statute, [a court should] look first to the plain and ordinary meaning of its terms.” *Anadarko Petroleum Corp. v. Utah State Tax Comm’n*, 2015 UT 25, ¶ 11, 345 P.3d 648. “When language is clear and unambiguous, it must be held to mean what it expresses, and no room is left for construction.” *Nelson v. Salt Lake Cnty.*, 905 P.2d 872, 875 (Utah 1995) (quoting *Salt Lake Child & Family Therapy Clinic, Inc. v. Frederick*, 890 P.2d 1017, 1020 (Utah 1995) (quoting *Hanchett v. Burbidge*, 202 P. 377, 380 (1921))). Likewise, “where two statutes treat the same subject matter, and one statute is general while the other is specific, the specific provision controls.” *Floyd v. W. Surgical Associates, Inc.*, 773 P.2d 401, 404 (Utah Ct. App. 1989).

Sections 511 and 513 set forth the statutory scheme that governs the application at issue in this case. Section 511(3)(c)(i) states a municipality “may” waive its zoning ordinance to “permit a billboard owner to relocate the billboard within the municipality’s

boundaries to a location that is mutually acceptable to the municipality and the billboard owner.” Utah Code §10-9a-511 (3)(c)(i). Section 511(3)(c)(ii) states that if the parties cannot reach a mutually agreeable location within ninety days of the submission of the application the provisions of section 513(2)(a)(iv) apply. Utah Code § 10-9a-511(3)(c)(ii). Section 513(2)(a)(iv) states that a municipality is “considered to have initiated the acquisition of a billboard structure by eminent domain if the municipality prevents a billboard owner from . . . relocating a billboard into any commercial, industrial, or manufacturing zone . . .” if the requested relocation is within one mile of the original location and meets other distance requirements. Utah Code § 10-9a-513(2)(a)(iv). Section 513(2)(d) sets forth the “just compensation” that is owed when a municipality is “considered to have initiated the acquisition of a billboard.” Utah Code § 10-9a-513(2)(d). This scheme essentially authorizes a municipality to waive its ordinances to allow relocation of a billboard and finds that in some circumstances just compensation is owed if a municipality declines to waive its ordinance and allow relocation.

No provision of section 511 or section 513 references the general Eminent Domain Statute or states that the provisions of that statute apply when a City denies a section 511 application, a point CBS concedes. (Appellant Br. 20 & 23.) Courts must “seek to give effect to omissions in statutory language by presuming all omissions to be purposeful.” *Marion Energy, Inc. v. KFJ Ranch P’ship*, 2011 UT 50, ¶ 14, 267 P.3d 863. The legislature had the means to incorporate the provisions of the Eminent Domain Statute by reference, if that was its intent. Its failure to do so must be understood as purposeful.

CBS's assertion that incorporation of the Eminent Domain Statute should be assumed because sections 511 and 513 do not specifically exclude that statute is contrary to this well established principle.

- ii. *Legislative history demonstrates sections 511 and 513 do not incorporate the Eminent Domain Statute and its condemnation process.*

Legislative history also demonstrates that it was not the intent of the legislature to incorporate the provisions of the Eminent Domain Statute and the condemnation process set forth in that statute into the statutory scheme set forth in sections 511 and 513. "When examining a statute, [courts] look first to its plain language as the best indicator of the legislature's intent and purpose in passing the statute." *Wilson v. Valley Mental Health*, 969 P.2d 416, 418 (Utah 1998). "[I]f that language is ambiguous [courts] turn to a consideration of legislative history and relevant policy considerations." *Id.*

CBS claims that the language of section 513 shows the legislature intended section 513 to incorporate the provisions of the Eminent Domain Statute because it states "[a] municipality is considered to have initiated the acquisition of a billboard structure by eminent domain" if the municipality prevents a billboard owner from relocating a billboard within parameters defined by that section. (Appellant Br. 16-17 & 19-20 (citing Utah Code § 10-9a-513(2)(a).) But legislative history demonstrates the opposite. In 2010, a bill was proposed to modify the language of section 513 to require a municipality to "initiate eminent domain proceedings in the district court" if it prevented the modifications or a relocation within the parameters identified in section 513. (R. 0209-

224, H.B. 180, 2010 Leg., Gen Sess. (Utah 2010).) The bill did not pass. By not passing this bill, the legislature made clear the provisions of the Eminent Domain Statute and the process set forth in that statute did not apply to the process of paying just compensation for the denial of a billboard-relocation permit, even if the denial gives rise to an obligation to pay just compensation.

iii. *Sections 511 and 513 do not incorporate the Eminent Domain Statute and its condemnation process because the statutes are not in pari materia.*

The Court may reject CBS's claim that sections 511 and 513 should be read as incorporating the terms of the Eminent Domain Statute for the additional reason that the statutes are not *in pari materia*. Statutes are only construed together when they are *in pari materia*. *J.J.W. v. State, Div. of Child & Family Servs.*, 2001 UT App 271, ¶¶ 21-23, 33 P.3d 59 (stating the “[s]tatute[s] are not *in pari materia* and we will not construe them together.) Statutes are *in pari materia* “when they relate to the same person or thing, to the same class of persons or things, or have the same purpose or object.” *Id.*, ¶ 22 (quoting *Utah County v. Orem City*, 699 P.2d 707, 709 (Utah 1985)).

In *J.J.W.* the State argued, similar to the argument made by CBS in this case, that the Juvenile Expungement Statute should be interpreted the same as the Criminal Expungement Statute and that the definition of “expungement” used in the Criminal Expungement Statute should also apply to the Juvenile Expungement Statute. *Id.*, ¶ 21. The court declined to impute the definition of one statute to the other because the statutes were not *in pari materia*. *Id.*, ¶ 23. In reaching the conclusion that the statutes were not

in pari materia the court found the statutes did not relate to the same person or class of persons because one statute “deals with records generated in connection with juvenile delinquency proceedings” whereas, the other statute “deals with adult criminal records.” *Id.* It also found that the statutes did not have the same purpose because the Juvenile Expungement Statute is broader than the Criminal Expungement Statute, permitting expungement of a wider category of documents. *Id.*

This case presents a much clearer example of statutes that are not *in pari materia*. The statutory scheme established by sections 511 and 513 do not relate to the same person or class of persons and do not have the same purpose as the Eminent Domain Statute. Section 511 sets forth a process for a municipality and a billboard owner to attempt to agree on relocation of a billboard and section 513 imposes an obligation to pay just compensation in some circumstances, if agreement is not reached. The Eminent Domain Statute sets forth the circumstances under which a government entity may take title to property and use that property for a public use and sets forth the process a government entity must follow when it exercises that power of eminent domain. Sections 511 and 513 and the Eminent Domain Statute are not *in pari materia* and the Court should not apply the process contained in the Eminent Domain Statute to sections 511 and 513.

- iv. *Section 511 and 513 do not incorporate the Eminent Domain Statute and its condemnation process⁷ because it is absurd to impose that process in a regulatory taking action.*

Reading sections 511 and 513 as incorporating the requirements of the Eminent Domain Statute and its condemnation process is also absurd because sections 511 and 513 set forth a circumstance in which a regulatory taking occurs. *See Encon Utah, LLC v. Fluor Ames Kraemer, LLC*, 2009 UT 7, ¶ 73, 210 P.3d 263, 276 (quoting *State ex rel. Z.C.*, 2007 UT 54, ¶ 15, n.5, 165 P.3d 1206 (“[when] statutory language plausibly presents the court with two alternative readings,” a court should adopt “the reading that avoids absurd results.”)). The statutory scheme established by sections 511 and 513 is a statutory determination that a regulatory taking occurs, in some circumstances, when a municipality declines to waive its ordinance and permit relocation of a billboard. A regulatory taking occurs at common law when the denial of an application for a permit or the passage of an ordinance deprives a property owner of “all reasonable [or economically viable] uses of his land.” *Tolman v. Logan City*, 2007 UT App 260, ¶ 11, 167 P.3d 489 (quoting *Cornish Town v. Koller*, 817 P.2d 305, 312 (Utah 1991).) If a property owner can make that showing the owner may receive just compensation for the taking. *See e.g., Nat’l Parks & Conservation Ass’n v. Bd. of State Lands*, 869 P.2d 909, 925 (Utah 1993) (overruled on other grounds) (“The state . . . need compensate a landowner only if the regulation deprives him or her of all economically viable use of the land . . .”).

Section 513 removes the requirement that a billboard owner show a taking of all economically viable use of a billboard to establish a regulatory taking when a City declines to waive its ordinances and permit relocation of a billboard under section 511. Instead, to establish a taking the billboard owner must show its application satisfies the circumstances listed in section 513 that give rise to an obligation to pay just compensation. Like any other decision that gives rise to a claim that a regulatory taking has occurred, the Eminent Domain Statute does not apply and a municipality is not required to follow the condemnation process set forth in that statute, including obtaining approval of the City Council before making a decision to deny a permit.

The provisions of the Eminent Domain Statute are also wholly inapplicable to a regulatory taking type action. For example, section 504 of the general Eminent Domain Statute provides a municipality must show that the property taken “is to be applied [to] a use authorized by law,” the taking is “necessary for the use,” and the “construction and use of all property sought to be condemned will commence within a reasonable time . . . after the initiation of proceedings.” Utah Code § 78B-6-504(a)-(c). This requirement is completely inapplicable to the denial of an application to relocate a billboard under section 511 of the Utah Municipal Code because a municipality does not take ownership of the billboard and it is not commencing any “construction” or “public use” of any property.

Section 504 also requires written notice be provided to the property owner and that the property owner be provided an opportunity to be heard before a final vote is taken by the political subdivision to take the property at issue. Utah Code § 78B-6-504(2)(b)-(d) .

It is completely illogical to require a municipality to provide written notice that it is going to deny an application to relocate before doing so. Likewise, it makes no sense to require a municipality to provide a billboard owner notice and a right to be heard before denying an application to relocate where the billboard owner is clearly on notice of the process because it filed an application to relocate and initiated the relocation process. It is absurd to impose the requirement of the Eminent Domain Statute on this regulatory taking action and the Court should decline to do so.

v. *Section 511 and 513 do not incorporate the Eminent Domain Statute and its condemnation process because it would allow a billboard owner to prevent a municipality from denying a section 511 application.*

Imposing the requirement of the Eminent Domain Statute and the condemnation process set forth in that statute gives rise to the additional absurd result that a billboard owner can prevent a municipality from ever denying an application to relocate under section 511, despite the fact the statute provides municipalities that choice. The condemnation process set forth in the Eminent Domain Statute and the Utah Relocation Assistance Act requires a condemning party to prepare an appraisal and negotiate in good faith with the property owner for the purchase of the property before condemning the property. *See* Utah Code § 78B-6-504(2)(b) (stating “[p]roperty may not be taken by a political subdivision of the state unless the governing body of the political subdivision approves the taking”); Utah Code § 78B-6-505(1)(a) (stating that before a political subdivision takes a final vote to approve the filing of an eminent domain action, the “governing body . . . make a reasonable effort to negotiate with the property owner for

the purchase of the property.”); Utah Code § 57-12-13(2) (requiring “[r]eal property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property.”); Utah Code § 57-12-13(3) (stating with respect to the amount offered in negotiations that “[i]n no event shall such amount be less than the lowest approved appraisal of the fair market value of the property.”). CBS argues these provisions also apply to the denial of a section 511 application. (Appellant Br. 23, n.1.)

Unlike a parcel of real property, an appraiser cannot value a billboard based on its size, geographic setting and comparable properties. Rather, Utah statute directs that a billboard is valued like a business, based on the actual annual revenue generated by the particular billboard at issue. Utah Code § 10-9a-513(2)(d)(i) (directing that “just compensation” for a billboard is calculated using “a fair market capitalization rate, based on actual annual revenue, less any annual rent expense”). If a billboard owner refuses to provide records showing the revenue generated by the billboard at issue, as billboard companies generally do when filing an application to relocate with the City, a municipality cannot prepare an appraisal and value the billboard as directed by Utah Code § 10-9a-513(2)(d)(i) before denying an application to relocate. This issue is extensively briefed in a matter currently pending before this Court.¹⁰

¹⁰ In that case, Reagan Outdoor Advertising (“Reagan”) filed an application to relocate a billboard under a different provision of the Utah State Code. See Appellant Br., 5-6 (§ A Statement of Facts) *Salt Lake City v. ROA General Inc. dba Reagan Outdoor Advertising*, Appellate No. 2015-0608-CA. At the time the application was filed, the land lease was set to expire and the landowner had represented it would not renew the lease. *Id.*, 7-8 (§ D Statement of Facts). The City denied the application,

Notably, CBS argued to the hearing officer and to the district court that the City's decision was illegal because the Eminent Domain Statute and condemnation process requires the City to file a Complaint in condemnation. CBS does not expressly raise that argument in this briefing, perhaps because it makes the absurdities of imposing the requirements of the Eminent Domain Statute and the condemnation process so apparent.

vi. *Section 512 does not show sections 511 and 513 incorporate the Eminent Domain Statute and the Condemnation Process.*

The Court may also reject CBS's argument that the Eminent Domain Statute applies because section 512 of the Municipal Code provides that "a municipality may only require termination of a billboard . . . by (a) gift; (b) purchase; (c) agreement; (d) exchange; or (e) eminent domain." Utah Code § 10-9a-512. The City did not require

which came with a statutory obligation to pay just compensation. *Id.* 7-8 (§ D Statement of Facts). The City attempted to obtain financial information from Reagan to prepare an appraisal and pay the just compensation owed. *Id.* 6-7 (§ B Statement of Facts). Reagan refused to provide the information, insisting the City was required to initiate formal condemnation proceedings and file a Complaint in condemnation or grant the application to relocate. *Id.* 6-7 (§ B Statement of Facts). The City did not agree that this was required, but filed the action. *Id.* 6-7 (§§ B-C Statement of Facts). Several years later an affiliate of Reagan purchased the property on which the billboard stands and entered into a new long term lease with Reagan. *Id.* 10-11 (§ G Statement of Facts). Now that Reagan no longer needed to relocate the billboard because of an expiring lease, it moved the court to dismiss the action because the City had not complied with the pre-filing requirements, including preparing an appraisal and entering into good faith negotiations with Reagan based on that appraisal. *Id.* 12-13 (§ I Statement of Facts). The district court dismissed the case. *Id.* The City appealed the decision because the City is not required to initiate condemnation under Title 78B, Chapter 6, Part 5, to deny an application to relocate and it is not possible to comply with the requirements of the condemnation process set forth in Title 78B, Chapter 6, Part 5, and the Utah Relocation Assistance Act if a billboard owner does not cooperate in the process. *See generally* Appellant Br. & Reply Br., *Salt Lake City v. ROA General Inc. dba Reagan Outdoor Advertising*, Appellate No. 2015-0608-CA. Oral argument is scheduled for September 15, 2016.

termination of CBS's billboard. Rather, CBS requested the City exercise the discretion it is afforded by section 511 and waive its zoning ordinance to permit CBS to relocate its billboard from one location to another location. The City declined. A municipality's refusal to permit relocation of a billboard is not the same as a municipality requiring the termination of a billboard. When a request for relocation is refused a billboard is free to remain at the existing location.¹¹ The fact that CBS demolished its billboard prior to making its request to relocate (because the landlord had evicted CBS from the land) does not transform CBS's request to relocate a billboard under section 511 into the City requiring termination of the billboard under section 512.

vii. *The City Council's role in appropriating funds does not show the City Council is required to approve the Mayor's decision to deny CBS's application.*

The City Council's role in appropriating funds does not show the City Council is required to approve the Mayor's decision to deny CBS's application. A decision to enforce or not enforce a zoning ordinance is classic executive function. *See supra* § II, A.1. That function is not removed because the decision results in the expenditure of funds. City Council does not weigh in on every City decision that results in the expenditure of funds. Rather, City Council appropriates funds and adopts a budget. *See generally* Utah Code § 10-9a-203. The executive branch manages the funds appropriated and makes decisions based on the funds appropriated or what Council will allocate in a

¹¹ Sections 511 and 513 do not contemplate a municipality demolishing and taking possession of the billboard the billboard owner wishes to relocate. Utah Code §§ 10-9a-511 & 513. Thus, it is the billboard owner's option to either remain at the existing location or elect to demolish its billboard and receive just compensation for the municipality's refusal to waive ordinances and permit relocation.

requested budget amendment. *See generally* Utah Code § 10-9a-202. Notably, there is no evidence in the record to show that funds were not appropriated or available to pay any amount that may become due as a result of the City's denial of CBS's application. The Mayor had authority to deny CBS's application without the approval of Council.

In addition, denying a section 511 application does not necessarily result in an obligation to pay funds. Whether the billboard fits the narrow categories of billboards for which compensation is owed may be the subject of dispute and hotly contested.¹² Likewise, even if a billboard owner can show entitlement to payment of just compensation under the statute, the owner may choose to keep its billboard at its current location and not enforce that right or elect to bank billboard credits in lieu of just compensation.¹³ *See supra* 6-7, § A, Statement of Facts. It is impractical and inconsistent with the roles of the City's branches of government, which place the responsibility of enforcing ordinances, approving permits, and managing litigation squarely in the realm of the administration, to require the City Council to pass on every permit request because there is a *possibility* that a municipality may incur an obligation to pay some as yet unknown amount at some unknown time in the future.

¹² For example, in this case CBS has brought to the attention of the City through its appeals of this matter that its now demolished billboard stood at a height of 86 feet, rather than the permitted 85 feet, which may absolve the City of any obligation to pay just compensation for denying its section 511 application. *See* Utah Code § 10-9a-513(3)(a)-(d) and 513(2)(c).

¹³ *See supra* n.11.

B. Section 21A.46.160(CC) does not Preclude the Denial of CBS's Application.

CBS claims, in the alternative, that the denial of its application is illegal because section 21A.46.160(CC) of the Salt Lake City Code precludes the City from denying its application. "It is well established that, where a city ordinance is in conflict with a state statute, the ordinance is invalid at its inception." *Hansen v. Eyre*, 2005 UT 29, ¶ 15, 116 P.3d 290, 293. See also *Salt Lake City v. Kusse*, 93 P.2d 671, 674 (1938) ("It is our view that the . . . [state statute] makes void all ordinances, otherwise lawful, which conflict with and constitute a barrier to the enforcement of the uniform state law."). "In determining whether an ordinance is in 'conflict' with general laws, the test is whether the ordinance permits or licenses that which the statute forbids and prohibits, and vice versa." *Hansen*, 2005 UT 29, ¶ 15 (quoting *Kusse*, 93 P.2d at 674)). The plain language of section 511 allows a municipality to waive (or not waive) provisions of its zoning ordinance to permit relocation of a billboard. Interpreting section 21A.46.160(CC) as precluding the City from waiving its ordinances under section 511, unless just compensation is owed for the denial, reads section 21A.46.160(CC) in conflict with the plain language of section 511 that expressly permits a municipality to do that very thing.

In addition, when interpreting the meaning of an ordinance a court looks first to the plain language of the ordinance and applies the same rules of statutory construction it applies when examining a statute. See e.g., *Carrier*, 2004 UT 98, ¶ 30. If the language is ambiguous, courts may resort to other modes of construction. *Id.*, ¶ 31. "In so doing, however, [courts] must keep in mind that '[w]hen interpreting a[n ordinance], it is

axiomatic that this court's primary goal 'is to give effect to the [City's] intent in light of the purpose that the [ordinance] was meant to achieve.'" *Id.*, (quoting *Biddle v. Washington Terrace City*, 1999 UT 110, ¶ 14, 993 P.2d 875 (quoting *Evans v. Utah*, 963 P.2d 177, 184 (Utah 1998))). Likewise, some deference is afforded the City's interpretation of its ordinance. *Id.*, ¶ 28. "[I]n close cases [the agency's] interpretation may be a determinative factor in choosing a particular interpretation over another." *Id.*, 31.

Section 21A.46.160(CC) of the Salt Lake City Code does not state the City must grant an application to relocate a billboard, if denial will result in an obligation to pay just compensation. It states: "Except as otherwise authorized herein, existing billboards may not be relocated except as mandated by the requirements of Utah State law." Salt Lake City Code § 21A.46.160(CC). If the City Council intended to pass a provision that required the granting of all applications to relocate, if denial triggered an obligation to pay just compensation, it would have passed a provision that said that. It did not.

Section 21A.46.160(CC) must also be read in the context of the purpose of the Billboard Ordinance and its placement in that ordinance. The Billboard Ordinance establishes a billboard banking system, which is the only way a billboard owner may relocate a billboard within the Salt Lake City limits under City law. Read in that context, it is clear the Council's intent in enacting section 21A.46.160(CC), the final provision of the billboard ordinance, was to state that the billboard banking system was the only way a billboard owner could relocate a billboard within Salt Lake City, unless a provision of state law required otherwise.

A review of the legislative history makes even clearer that this was the intent of the legislature. Section 21A.46.160(CC) was passed at a time when the billboard industry was lobbying for state bills in an attempt to reduce a City's ability to deny applications for permits to modify or relocate billboards.¹⁴ *See e.g.*, Utah Code § 72-7-516 (enacted 2002); R. 0746, SLCC 01716-22, S.B. 53, 2004 Leg., Gen. Sess. (Utah 2001) (expanding circumstances under which a municipality must pay just compensation for the denial of a permit to relocate or otherwise modify a billboard). Section 21A.46.160(CC) is nothing more than a statement by City Council that the City cannot be forced to allow relocation (unless mandated by state law) and prevents billboard companies from attempting to force the City to grant a relocation request where state law gives the City discretion to deny those requests, as CBS is attempting to do in this case.

Finally, some deference should be afforded the City's interpretation of its own ordinance. The City has never interpreted this provision to require the City to grant any application to relocate when just compensation is owed for the denial. Indeed, the City has denied prior requests for relocation that resulted in an obligation to pay just compensation. *See e.g.*, *Salt Lake City v. ROA General Inc. dba Reagan Outdoor Advertising, et al.*, Appellate Case No. 20150608-CA. Section 21A.46.160(CC) does not require the City to grant CBS's application and the City's denial of that application was not illegal.

¹⁴ Section 21A.46.160(CC) was passed in 2004. (R. 0746, SLCC 01726 & 1731.)

C. The City's Denial of CBS's Application is Supported by Substantial Evidence.

The City's denial of CBS's application is not arbitrary and capricious because there is substantial evidence to show denying the application furthered the City's goal of reducing the number of billboards within City limits. A decision is arbitrary and capricious if the decision is not supported by substantial evidence in the record. *Carlsen*, 2012 UT App 260 ¶ 4. In determining whether there is substantial evidence to support a decision "[i]t is not [the] prerogative [of the court] to weigh the evidence anew." *Id.*, ¶ 5 (quoting *Patterson v. Utah Cty. Bd. of Adjustment*, 893 P.2d 602, 604 (Utah Ct. App. 1995)). Rather, the court "must simply determine, in light of the evidence before the [decision making body], whether a reasonable mind could reach the same conclusion." *Id.* Likewise, given the nature of judicial review of a decision making body's decision "[i]t is incumbent upon the party challenging the . . . decision to marshal all of the evidence in support thereof and show that despite the supporting facts, and in light of conflicting or contradictory evidence, the . . . decision [is] not supported by substantial evidence." *Id.* A party cannot simply argue facts that support its position and ignore the facts that support the administrative decision. *Id.*, ¶ 7.

The City denied CBS's section 511 application because it furthered the City's goal of reducing the total number of billboards within City limits. CBS demolished its billboard before it submitted its section 511 application because the land lease had expired and the landlord had evicted the billboard from the property. *See supra* 7-8, § B, Statement of Facts. Thus, denial of the request to relocate the billboard results in the

reduction of the total number of billboards in the City. CBS contends the decision was arbitrary and capricious because the Becker administration did not have a policy, practice or goal of reducing the number of billboards within City limits and a policy, practice or goal of an administration must be in writing and enacted by the City Council to be valid.

First, CBS has completely failed to satisfy its burden and marshal the evidence that supports a finding that the Becker administration had a policy, practice or goal of retiring billboards. Instead, CBS simply argues no such policy exists.

Second, a proper marshalling of the evidence reveals that the record is replete with documents that illustrate the City's policy, practice, and goal of reducing billboards in the City limits. These documents include (1) the City's Billboard Ordinance;¹⁵ (2) the 2011 proposal by the Becker administration to amend the Billboard Ordinance;¹⁶ (3) Mayor

¹⁵ The City's Billboard Ordinance states its purpose is to limit the number of billboards to the current number. Salt Lake City Code § 21A.46.160(A). It also sets up a process for "banking" billboard credits in certain circumstances. Salt Lake City Code §§ 21A.46.160(D)-(H). The billboard banking system permits a billboard owner to "bank credits" if the billboard owner demolishes a billboard that is located in a "gateway" (or other restricted area). Salt Lake City Code §§ 21A.46.160(D)-(H). Billboard credits may be used to construct a new billboard in a non-gateway area, if they are used within three years of the date of creation. Salt Lake City Code §§ 21A.46.160(G)&(N). The billboard banking system has the effect of reducing the number of billboards in "gateways." It also has the effect of reducing the total number of billboards in the City because a billboard owner is not always able to find a new location and redeem the credits before they expire.

¹⁶ In 2011 the Becker administration proposed an amendment to the City's Billboard Ordinance to amend the "purpose statement" to read as follows: "This chapter is intended to limit and reduce the maximum number of billboards in Salt Lake City." (R. 0746, SLCC 001572-77.) That amendment was proposed to "update current regulations for outdoor billboards to make them consistent with State law." (R. 0746, SLCC 001572-73). That amendment was not passed because the billboard ordinance revisions also included revisions to the City's electronic billboard restrictions and the City Council declined to consider the changes.

Becker's 2013 State of the City address;¹⁷ (4) the Declaration of Mayor Becker;¹⁸ (5) the City's history of denying other applications to relocate billboards and electing to pay just compensation for that denial;¹⁹ and (6) agreements the City has entered into with property owners to limit the ability to place billboards on their properties.²⁰ The hearing officer and the district court considered this evidence and found that there was substantial evidence to show the Becker administration had a long-standing policy, practice or goal of reducing the number of billboards within City limits.

Third, a policy, practice or goal of an administration does not need to be in writing and enacted by the City Council to be valid. In its letter denying CBS's application, the City stated it was not willing to waive its ordinances and permit the relocation because "the City has a long standing policy in favor of retiring and removing billboards." (R. 0746, 01542.) CBS myopically focuses on the City's use of the word "policy" and claims that there is no "policy" of reducing billboards in the City limits because the

¹⁷ In Mayor Becker's 2013 State of the City address, Mayor Becker repeated his administration's policy and practice of reducing the number of billboards. (R. 0746, SLCC 001539, ¶ 7).

¹⁸ Mayor Becker submitted a declaration referencing the "City's longstanding policy to reduce the total number of billboards within the City" and stated that the decisions on the applications CBS appeals were made pursuant to that policy. (R. 0746, SLCC 001539, ¶ 7). It is well-known that the Becker administration was consistently in favor of reducing the number of billboards in the City and CBS received ample evidence of the Becker administration putting that position into practice by denying billboard relocation applications on gateway streets whenever the opportunity to do so arose. (R. 0746, SLCC 001568-69).

¹⁹ The City has a history of denying applications to relocate and retiring billboards when the opportunity arises, even when it results in protracted litigation. *See e.g., Salt Lake City v. Reagan Outdoor Advertising, et. al.* District Court Case No. 100910552, Appellate Case No. 2015-0608-CA.

²⁰ The City has entered into agreements with property owners to limit the ability to place billboards on that property in the future. (R. 0746, SLCC 001589-1622).

administration does not have authority to make policy. In its ordinary use, and the use intended by counsel when writing this letter, the word “policy” includes common practices and stated objectives and goals of an administration. Clearly, the administration, as the executive branch of the municipal government, has the authority to set forth its objectives and goals for the City and direct the executive and administrative departments of the City to act to further that vision. *See e.g.*, Utah Code § 10-3b-202(1)(b) (stating the administration “exercises the executive and administrative powers and performs or supervises the performance of the executive and administrative duties and functions of the municipality”); Utah Code § 10-3b-202(1)(d)(v) (stating the administration may “exercise control of and supervise each executive or administrative department, division, or officer of the municipality”). For example, decreasing homelessness, improving public transportation, rejuvenating downtown, and improving walkability and bikeability are all administrative policies, objectives and goals. These policies, objectives and goals instruct the decisions and actions of an administration and its departments and formal legislation passed by Council is not required to legitimize those policies, objectives and goals. In this case, the Becker administration had a consistent policy, objective and goal to reduce the number of billboards in the City, and the administration acted to further that goal when it denied CBS’s section 511 application.

Finally, the Court should disregard CBS’s claim that the Becker administration’s policy, practice, or goal of reducing billboards in the City limits was contrary to the City’s Billboard Ordinance. A “cap and replace” system is not inconsistent with reducing

the number of billboards in the City limits and the billboard banking system established by the Billboard Ordinance operates in practice to reduce the number of billboards in the City limits. *See supra* n.15. Likewise, there are myriad reasons the 2011 amendments to the Billboard Ordinance were not adopted, which are outside the scope of the record of this case. Regardless, the City Council's failure to adopt the amended ordinance does not show the Becker administration had no policy, practice, or goal of reducing the number of billboards in the City limits and does not show the Mayor could not act to further that goal where the law gave him authority to do so, as it does in this case. The decision to deny CBS's section 511 application to further the City's goal of reducing the number of billboards in the City limits was not arbitrary and capricious.

III. THE CITY'S APPROVAL OF CORNER PROPERTY'S APPLICATION WAS NOT ARBITRARY, CAPRICIOUS OR ILLEGAL.

A. The City Can Waive its Ordinances to Permit Relocation of Corner Property's Billboard.

CBS does not dispute the Mayor has authority to approve Corner Property's section 511 application, but contends the approval was illegal because section 511 does not permit a City to waive ordinances that regulate the height of billboards. The rules of statutory construction previously discussed also apply here. *See supra* § II, A.2.i-v (directing courts to look to the plain language of statutes and not to construe statutes to give rise to absurd results.)

As established by the briefing in this matter, section 511 allows a City to waive (or not waive) its zoning ordinances to permit relocation of a billboard. It is apparent from

the plain language of section 511 that section 511 does not limit relocation applications to requests for relocation within a certain distance, relocation of billboards of a certain height, or relocation of a billboard with the same square footage or the same number of faces. Utah Code § 10-9a-511(3)(c). Rather, a billboard owner may submit an application pursuant to section 511 that requests any relocation it desires. Utah Code § 10-9a-511 (3)(c). This does not mean that the municipality will agree to waive its ordinances and grant that application, but no form of application is specifically precluded.

Moreover, as a practical matter, section 511 necessarily must contemplate waiver of ordinances relating to the height of the relocated billboard. Section 511 allows the City to waive its zoning ordinance to permit relocation of a billboard to a “mutually acceptable” location. Relocation is not going to be “mutually acceptable” if the billboard is not visible at the new location. In this case, the proposed relocation was to the site of CBS’s now demolished billboard. In 2003, CBS’s predecessor successfully argued that the height of any billboard at that location needs to be 85 feet to be visible.²¹ Indeed, before pursuing relocation of its billboard under section 511, CBS submitted an application under Utah Code § 72-7-510.5 and attempted to persuade the court that a billboard at this location needed to be 116 feet tall to be visible. (R. 0746, SLCC 001428-

²¹ Specifically, in April, 2003, the prior owner of CBS’s billboard applied for and received permission from the City under a different provision of Utah Code to raise the height of the billboard at that location. (R. 0746, SLCC 001422-26). The provision of the code the prior owner applied under permits a billboard owner to raise the height of a billboard if the “view and readability” is obstructed by certain improvements to an interstate highway. Utah Code § 72-7-510.5. CBS’s predecessor was granted a permit and allowed to increase the height of its billboard to 85 feet because the new highway walls obstructed the “view and readability” of the billboard.

31).²² Because a billboard needs to stand at 85 feet to be visible at the 726 West South Temple location, the City waived its ordinances that would limit the billboard to 60 feet. It is absurd for CBS to argue that the City's approval of Corner Property's application is illegal because the City cannot waive its ordinances to allow the billboard to stand at the same height as previous billboard companies argued was necessary to be visible at that location.

Finally, it was not illegal for the City to grant Corner Property a permit to construct a billboard with two faces because Corner Property's 500 South billboard had two faces.²³ CBS has not shown the City's approval of Corner Property's section 511 application violated any law, statute or ordinance and the decision was not illegal.

²² That application was denied because CBS was attempting to both move the billboard and raise the height, which is not permitted by that provision of the code. (R. 0746, SLCC 001433-36). Notably, CBS argued to the district court that this prior attempt to move and raise its billboard showed the City may not waive zoning requirements relating to height in an application to relocate a billboard. Unlike section 511, Utah Code § 72-7-510.5 provides two distinct options to restore the view and readability of a billboard that is obstructed by UDOT improvements: one, move the billboard within 500 feet of its original location or two, raise the height of the billboard in its current location. Utah Code § 72-7-510.5. In contrast, section 511 does not identify specific options available to a billboard owner or the City with respect to relocation of a billboard under section 511. Rather, section 511 contemplates a negotiation and a waiver of zoning ordinances to permit relocation to a "mutually acceptable" location. Utah Code § 10-9a-511 (3)(c)(i). Perhaps conceding that this reference is unhelpful, as the City argued to the district court, CBS does not raise this point in this appeal.

²³ CBS's assertion relies on the claim that the 500 South billboard "has been permitted by the City and by UDOT for only one face." (Appellant Br. 27.) As the City explained to the hearing officer, the City was unable to locate a copy of the original permit issued by the City because the permit was issued at least two decades ago. (R. 0746, SLCC 001415.) However, location of the permit is of little assistance because prior to April 12, 1995, billboards were regulated by location and separation requirements, not by a "billboard banking" method that keeps track of the number of billboards and number of faces. (R. 0746, SLCC 001415.) Thus, Corner Property's

B. The City's Approval of Corner Property's Application is Supported by Substantial Evidence.

The approval of Corner Property's application (and denial of CBS's application) was not arbitrary and capricious because those decisions resulted in the removal of a billboard from 500 South, a critical "gateway" into the City, and reduced the total number of billboards in the City by one. *See supra* § II, C (showing a decision is not arbitrary or capricious if it is supported by substantial evidence). Specifically, the City agreed to waive its ordinance and approve Corner Property's application because Corner Property entered into a billboard relocation agreement under which Corner Property agreed to remove a billboard on 500 South, a critical gateway into the City, if the City granted it a permit to construct a billboard at 726 West South Temple. As articulated at the December 14, 2015 public hearing by a former employee of Reagan Outdoor Advertising, notably a party with no property interest in the outcome of this hearing, the opportunity to retire Corner Property's 500 South billboard was especially valuable to the City because Corner Property owns the property on which its 500 South billboard stands.

initial permit from the City would not include the number of faces or permitted square footage. (R. 0746, SLCC 001415.) Similarly, as explained by Corner Property, UDOT only requires permitting for billboards that face the flow of traffic and 500 South is a one way street. (R. 0746, SLCC 001415, 001421 & 001829-30.)

Moreover, apparent "illegality" or lack of proper permitting of a billboard does not preclude relocation of a billboard. The billboard industry lobbied the legislature for statutory provisions that would require the payment of just compensation under section 513 in circumstances where a billboard was not properly permitted or was otherwise "illegal." *See e.g.*, Utah Code § 10-9a-513(a)-(d) (excusing requirement to pay just compensation under section 513(2) only where it can be shown by "clear and convincing evidence" that the applicant made a "false and misleading" statement in the application for a permit); Utah Code § 10-9a-513(2)(c) (same).

(R. 0746, SLCC 002234, 35:1070-37:1150.) When a billboard owner owns the property on which the billboard stands, it is very unlikely the billboard will ever be retired as there is no lease that will eventually expire. *Id.* Moreover, 500 South is a particularly important gateway street for the City because it provides access into the City from the highway. *Id.* Corner Property's billboard was the only remaining billboard on 500 South from 300 West to 700 East. *Id.* (R. 0746, SLCC 002305.)

In addition to removing a billboard from 500 South, granting Corner Property's application and denying CBS's application resulted in the reduction of the total number of billboards in the City limits by one.

CBS has argued previously that the City could have denied both applications and reduced the total number of billboards in the City by two. That is not correct. Removal of the 500 South billboard was contingent on granting Corner Property's application to move to the 726 West South Temple location. Denial of both applications still results in the net reduction of one billboard. The City made the decision that reducing the number of billboards on 500 South was more important than reducing the number of billboards on I-15. This preference for the removal of billboard from 500 South does not need to be in writing and enacted by the City Council to be a legitimate reason to grant Corner Property's application over CBS's application.²⁴ *See supra* 36-37, § II, C.

Unlike Corner Property, CBS offered no inducement for the City to exercise its discretion to waive its ordinance with respect to CBS's application. To the contrary, CBS

²⁴ CBS is well aware that beautifying 500 South and 600 South, which includes relocation of billboards away from those gateway streets, is an ongoing discussion in the City and Salt Lake County that is referred to as the "Grand Boulevard" project.

had already demolished the billboard it now seeks to relocate because the land lease expired and the property owner evicted CBS from the property. Indeed, such a circumstance presents exactly the opposite incentive, since it provides an opportunity for the City to retire a billboard at a relatively low cost to the City.

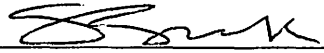
Curiously, CBS argues that the City's approval of Corner Property's application was arbitrary and capricious because Corner Property's billboard remains on 500 South. (Appellant Br. 29, n.2.) Simply driving down 500 South confirms that statement is incorrect.

The City's approval of Corner Property's application (and the denial of CBS's application) was supported by substantial evidence and was not arbitrary or capricious.

CONCLUSION

The Court should affirm the City's decisions to deny CBS's application and to approve Corner Property's application because those decisions do not violate any law, statute or ordinance and are not illegal. Likewise, CBS has not marshaled the evidence that supports the City's decisions and that evidence shows the City's decisions were supported by substantial evidence and are not arbitrary and capricious. Finally, even if this Court found the approval of City Council was necessary to deny CBS's application, CBS's remedy is a remand of that decision for the City to obtain that approval, not a decision granting CBS a permit and revoking Corner Property's permit, as CBS requests.

DATED this 15th day of August, 2016.



Attorney for Defendant/Appellee
Salt Lake City Corporation

CERTIFICATE OF COMPLIANCE

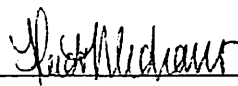
This brief, submitted under Utah Rule of Appellate Procedure 24(f)(1), complies with the type-volume limitation. The word processing system used to prepare this brief states that it contains 13,518 words and 1,158 lines in Times New Roman type, which is a proportionally spaced font.

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of August, 2016, a true and correct copy of **BRIEF OF APPELLEE SALT LAKE CITY CORPORATION** was served via U.S. Mail, postage pre-paid, to the following:

Leslie Van Frank, leslie@cohnekinghorn.com
Bradley M. Strassberg, bstrassberg@cohnekinghorn.com
COHNE KINGHORN, P.C.
111 East Broadway, 11th Floor
Salt Lake City, UT 84111

Jon H. Rogers, rogersconsumerlaw@gmail.com
825 North 300 West, Suite N144
Northgate Business Center
Salt Lake City, UT 84103



HB_ATTY-#54485

Appellee's Addendum

West's Utah Code Annotated

Title 10. Utah Municipal Code

Chapter 9A. Municipal Land Use, Development, and Management Act (Refs & Annos)

Part 5. Land Use Ordinances

U.C.A. 1953 § 10-9a-511

§ 10-9a-511. Nonconforming uses and noncomplying structures

Currentness

(1)(a) Except as provided in this section, a nonconforming use or noncomplying structure may be continued by the present or a future property owner.

(b) A nonconforming use may be extended through the same building, provided no structural alteration of the building is proposed or made for the purpose of the extension.

(c) For purposes of this Subsection (1), the addition of a solar energy device to a building is not a structural alteration.

(2) The legislative body may provide for:

(a) the establishment, restoration, reconstruction, extension, alteration, expansion, or substitution of nonconforming uses upon the terms and conditions set forth in the land use ordinance;

(b) the termination of all nonconforming uses, except billboards, by providing a formula establishing a reasonable time period during which the owner can recover or amortize the amount of his investment in the nonconforming use, if any; and

(c) the termination of a nonconforming use due to its abandonment.

(3)(a) A municipality may not prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure that is involuntarily destroyed in whole or in part due to fire or other calamity unless the structure or use has been abandoned.

(b) A municipality may prohibit the reconstruction or restoration of a noncomplying structure or terminate the nonconforming use of a structure if:

(i) the structure is allowed to deteriorate to a condition that the structure is rendered uninhabitable and is not repaired or restored within six months after written notice to the property owner that the structure is uninhabitable and that the noncomplying structure or nonconforming use will be lost if the structure is not repaired or restored within six months; or

(ii) the property owner has voluntarily demolished a majority of the noncomplying structure or the building that houses the nonconforming use.

(c)(i) Notwithstanding a prohibition in its zoning ordinance, a municipality may permit a billboard owner to relocate the billboard within the municipality's boundaries to a location that is mutually acceptable to the municipality and the billboard owner.

(ii) If the municipality and billboard owner cannot agree to a mutually acceptable location within 90 days after the owner submits a written request to relocate the billboard, the provisions of Subsection 10-9a-513(2)(a)(iv) apply.

(4)(a) Unless the municipality establishes, by ordinance, a uniform presumption of legal existence for nonconforming uses, the property owner shall have the burden of establishing the legal existence of a noncomplying structure or nonconforming use.

(b) Any party claiming that a nonconforming use has been abandoned shall have the burden of establishing the abandonment.

(c) Abandonment may be presumed to have occurred if:

(i) a majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written agreement with the municipality regarding an extension of the nonconforming use;

(ii) the use has been discontinued for a minimum of one year; or

(iii) the primary structure associated with the nonconforming use remains vacant for a period of one year.

(d) The property owner may rebut the presumption of abandonment under Subsection (4)(c), and shall have the burden of establishing that any claimed abandonment under Subsection (4)(b) has not in fact occurred.

(5) A municipality may terminate the nonconforming status of a school district or charter school use or structure when the property associated with the school district or charter school use or structure ceases to be used for school district or charter school purposes for a period established by ordinance.

Credits

Laws 2005, c. 254, § 40, eff. May 2, 2005; Laws 2007, c. 171, § 1, eff. April 30, 2007; Laws 2009, c. 170, § 1, eff. May 12, 2009; Laws 2010, c. 394, § 1, eff. May 11, 2010; Laws 2011, c. 210, § 1, eff. May 10, 2011; Laws 2012, c. 289, § 4, eff. May 8, 2012; Laws 2015, c. 205, § 1, eff. May 12, 2015.

U.C.A. 1953 § 10-9a-511, UT ST § 10-9a-511

Current through 2016 Third Special Session

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 10. Utah Municipal Code

Chapter 9A. Municipal Land Use, Development, and Management Act (Refs & Annos)

Part 5. Land Use Ordinances

U.C.A. 1953 § 10-9a-513

§ 10-9a-513. Municipality's acquisition of billboard by eminent domain--Removal without providing compensation--Limit on allowing nonconforming billboards to be rebuilt or replaced--Validity of municipal permit after issuance of state permit

Currentness

(1) As used in this section:

(a) "Clearly visible" means capable of being read without obstruction by an occupant of a vehicle traveling on a street or highway within the visibility area.

(b) "Highest allowable height" means:

(i) if the height allowed by the municipality, by ordinance or consent, is higher than the height under Subsection (1)(b)(ii), the height allowed by the municipality; or

(ii)(A) for a noninterstate billboard:

(I) if the height of the previous use or structure is 45 feet or higher, the height of the previous use or structure; or

(II) if the height of the previous use or structure is less than 45 feet, the height of the previous use or structure or the height to make the entire advertising content of the billboard clearly visible, whichever is higher, but no higher than 45 feet; and

(B) for an interstate billboard:

(I) if the height of the previous use or structure is at or above the interstate height, the height of the previous use or structure; or

(II) if the height of the previous use or structure is less than the interstate height, the height of the previous use or structure or the height to make the entire advertising content of the billboard clearly visible, whichever is higher, but no higher than the interstate height.

(c) "Interstate billboard" means a billboard that is intended to be viewed from a highway that is an interstate.

(d) "Interstate height" means a height that is the higher of:

(i) 65 feet above the ground; and

(ii) 25 feet above the grade of the interstate.

(e) "Noninterstate billboard" means a billboard that is intended to be viewed from a street or highway that is not an interstate.

(f) "Visibility area" means the area on a street or highway that is:

(i) defined at one end by a line extending from the base of the billboard across all lanes of traffic of the street or highway in a plane that is perpendicular to the street or highway; and

(ii) defined on the other end by a line extending across all lanes of traffic of the street or highway in a plane that is:

(A) perpendicular to the street or highway; and

(B)(I) for an interstate billboard, 500 feet from the base of the billboard; or

(II) for a noninterstate billboard, 300 feet from the base of the billboard.

(2)(a) A municipality is considered to have initiated the acquisition of a billboard structure by eminent domain if the municipality prevents a billboard owner from:

(i) rebuilding, maintaining, repairing, or restoring a billboard structure that is damaged by casualty, an act of God, or vandalism;

(ii) except as provided in Subsection (2)(c), relocating or rebuilding a billboard structure, or taking other measures, to correct a mistake in the placement or erection of a billboard for which the municipality has issued a permit, if the proposed relocation, rebuilding, or other measure is consistent with the intent of that permit;

(iii) structurally modifying or upgrading a billboard;

(iv) relocating a billboard into any commercial, industrial, or manufacturing zone within the municipality's boundaries, if:

(A) the relocated billboard is:

(I) within 5,280 feet of its previous location; and

(II) no closer than:

(Aa) 300 feet from an off-premise sign existing on the same side of the street or highway; or

(Bb) if the street or highway is an interstate or limited access highway that is subject to Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act, the distance allowed under that act between the relocated billboard and an off-premise sign existing on the same side of the interstate or limited access highway; and

(B)(I) the billboard owner has submitted a written request under Subsection 10-9a-511(3)(c); and

(II) the municipality and billboard owner are unable to agree, within the time provided in Subsection 10-9a-511(3)(c), to a mutually acceptable location; or

(v) making the following modifications, as the billboard owner determines, to a billboard that is structurally modified or upgraded under Subsection (2)(a)(iii) or relocated under Subsection (2)(a)(iv):

(A) erecting the billboard:

(I) to the highest allowable height; and

(II) as the owner determines, to an angle that makes the entire advertising content of the billboard clearly visible; and

(B) installing a sign face on the billboard that is at least the same size as, but no larger than, the sign face on the billboard before its relocation.

(b) A modification under Subsection (2)(a)(v) shall comply with Title 72, Chapter 7, Part 5, Utah Outdoor Advertising Act, to the extent applicable.

(c) A municipality's denial of a billboard owner's request to relocate or rebuild a billboard structure, or to take other measures, in order to correct a mistake in the placement or erection of a billboard does not constitute the initiation of acquisition by eminent domain under Subsection (2)(a) if the mistake in placement or erection of the billboard is determined by clear and convincing evidence to have resulted from an intentionally false or misleading statement:

(i) by the billboard applicant in the application; and

(ii) regarding the placement or erection of the billboard.

(d) If a municipality is considered to have initiated the acquisition of a billboard structure by eminent domain under Subsection (2)(a) or any other provision of applicable law, the municipality shall pay just compensation to the billboard owner in an amount that is:

(i) the value of the existing billboard at a fair market capitalization rate, based on actual annual revenue, less any annual rent expense;

(ii) the value of any other right associated with the billboard structure that is acquired;

(iii) the cost of the sign structure; and

(iv) damage to the economic unit described in Subsection 72-7-510(3)(b), of which the billboard owner's interest is a part.

(3) Notwithstanding Subsection (2) and Section 10-9a-512, a municipality may remove a billboard without providing compensation if:

(a) the municipality determines:

(i) by clear and convincing evidence that the applicant for a permit intentionally made a false or misleading statement in the applicant's application regarding the placement or erection of the billboard; or

(ii) by substantial evidence that the billboard:

(A) is structurally unsafe;

(B) is in an unreasonable state of repair; or

(C) has been abandoned for at least 12 months;

(b) the municipality notifies the owner in writing that the owner's billboard meets one or more of the conditions listed in Subsections (3)(a)(i) and (ii);

(c) the owner fails to remedy the condition or conditions within:

(i) except as provided in Subsection (3)(c)(ii), 90 days following the billboard owner's receipt of written notice under Subsection (3)(b); or

(ii) if the condition forming the basis of the municipality's intention to remove the billboard is that it is structurally unsafe, 10 business days, or a longer period if necessary because of a natural disaster, following the billboard owner's receipt of written notice under Subsection (3)(b); and

(d) following the expiration of the applicable period under Subsection (3)(c) and after providing the owner with reasonable notice of proceedings and an opportunity for a hearing, the municipality finds:

(i) by clear and convincing evidence, that the applicant for a permit intentionally made a false or misleading statement in the application regarding the placement or erection of the billboard; or

(ii) by substantial evidence that the billboard is structurally unsafe, is in an unreasonable state of repair, or has been abandoned for at least 12 months.

(4) A municipality may not allow a nonconforming billboard to be rebuilt or replaced by anyone other than its owner or the owner acting through its contractors.

(5) A permit issued, extended, or renewed by a municipality for a billboard remains valid from the time the municipality issues, extends, or renews the permit until 180 days after a required state permit is issued for the billboard if:

(a) the billboard requires a state permit; and

(b) an application for the state permit is filed within 30 days after the municipality issues, extends, or renews a permit for the billboard.

Credits

Laws 2005, c. 254, § 42, eff. May 2, 2005; Laws 2007, c. 171, § 2, eff. April 30, 2007; Laws 2009, c. 170, § 2, eff. May 12, 2009; Laws 2009, c. 233, § 1, eff. May 12, 2009.

U.C.A. 1953 § 10-9a-513, UT ST § 10-9a-513
Current through 2016 Third Special Session

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 10. Utah Municipal Code

Chapter 9A. Municipal Land Use, Development, and Management Act (Refs & Annos)

Part 7. Appeal Authority and Variances

U.C.A. 1953 § 10-9a-701

§ 10-9a-701. Appeal authority required--Condition precedent to judicial review--Appeal authority duties

Currentness

(1) Each municipality adopting a land use ordinance shall, by ordinance, establish one or more appeal authorities to hear and decide:

(a) requests for variances from the terms of the land use ordinances;

(b) appeals from decisions applying the land use ordinances; and

(c) appeals from a fee charged in accordance with Section 10-9a-510.

(2) As a condition precedent to judicial review, each adversely affected person shall timely and specifically challenge a land use authority's decision, in accordance with local ordinance.

(3) An appeal authority:

(a) shall:

(i) act in a quasi-judicial manner; and

(ii) serve as the final arbiter of issues involving the interpretation or application of land use ordinances; and

(b) may not entertain an appeal of a matter in which the appeal authority, or any participating member, had first acted as the land use authority.

(4) By ordinance, a municipality may:

(a) designate a separate appeal authority to hear requests for variances than the appeal authority it designates to hear appeals;

- (b) designate one or more separate appeal authorities to hear distinct types of appeals of land use authority decisions;
 - (c) require an adversely affected party to present to an appeal authority every theory of relief that it can raise in district court;
 - (d) not require an adversely affected party to pursue duplicate or successive appeals before the same or separate appeal authorities as a condition of the adversely affected party's duty to exhaust administrative remedies; and
 - (e) provide that specified types of land use decisions may be appealed directly to the district court.
- (5) If the municipality establishes or, prior to the effective date of this chapter, has established a multiperson board, body, or panel to act as an appeal authority, at a minimum the board, body, or panel shall:
- (a) notify each of its members of any meeting or hearing of the board, body, or panel;
 - (b) provide each of its members with the same information and access to municipal resources as any other member;
 - (c) convene only if a quorum of its members is present; and
 - (d) act only upon the vote of a majority of its convened members.

Credits

Laws 2005, c. 254, § 61, eff. May 2, 2005; Laws 2011, c. 92, § 4, eff. May 10, 2011.

U.C.A. 1953 § 10-9a-701, UT ST § 10-9a-701
Current through 2016 Third Special Session

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

West's Utah Code Annotated

Title 10. Utah Municipal Code

Chapter 9A. Municipal Land Use, Development, and Management Act (Refs & Annos)

Part 7. Appeal Authority and Variances

U.C.A. 1953 § 10-9a-707

§ 10-9a-707. Standard of review for appeals

Currentness

- (1) A municipality may, by ordinance, designate the standard of review for appeals of land use authority decisions.
- (2) If the municipality fails to designate a standard of review of factual matters, the appeal authority shall review the matter de novo.
- (3) The appeal authority shall determine the correctness of a decision of the land use authority in its interpretation and application of a land use ordinance.
- (4) Only those decisions in which a land use authority has applied a land use ordinance to a particular application, person, or parcel may be appealed to an appeal authority.

Credits

Laws 2005, c. 254, § 67, eff. May 2, 2005.

U.C.A. 1953 § 10-9a-707, UT ST § 10-9a-707

Current through 2016 Third Special Session

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.

Chapter 21A.16

APPEALS OF ADMINISTRATIVE DECISIONS

This section has been affected by a recently passed ordinance, 10-2016 - LAND USE PROVISIONS . [Go to new ordinance.](#)

21A.16.010: AUTHORITY:

As described in section 21A.06.040 of this title, the appeals hearing officer shall hear and decide appeals alleging an error in any administrative decision made by the zoning administrator or the administrative hearing officer in the administration or enforcement of this title, as well as administrative decisions of the historic landmark commission; and the planning commission.

In addition, the appeals hearing officer shall hear and decide applications for variances as per chapter 21A.18 of this title. (Ord. 61-12, 2012)

21A.16.020: PARTIES ENTITLED TO APPEAL:

An applicant or any other person or entity adversely affected by a decision administering or interpreting this title may appeal to the appeals hearing officer. (Ord. 31-12, 2012)

This section has been affected by a recently passed ordinance, 10-2016 - LAND USE PROVISIONS . [Go to new ordinance.](#)

21A.16.030: PROCEDURE:

Appeals of administrative decisions by the zoning administrator, historic landmark commission or planning commission to the appeals hearing officer shall be taken in accordance with the following procedures:

- A. Filing Of Appeal: An appeal shall be made in writing within ten (10) days of the administrative decision by the zoning administrator, historic landmark commission or planning commission and shall be filed with the zoning administrator. The appeal shall specify the decision appealed, the alleged error made in connection with the decision

being appealed, and the reasons the appellant claims the decision to be in error, including every theory of relief that can be presented in district court.

B. Fees: The application shall be accompanied by the applicable fees shown on the Salt Lake City consolidated fee schedule. The applicant shall also be responsible for payment of all fees established for providing the public notice required by chapter 21A.10 of this title.

C. Stay Of Proceedings: An appeal to the appeals hearing officer shall stay all further proceedings concerning the matter about which the appealed order, requirement, decision, determination, or interpretation was made unless the zoning administrator certifies in writing to the appeals hearing officer, after the appeal has been filed, that a stay would, in the zoning administrator's opinion, be against the best interest of the city.

D. Notice Required:

1. Public Hearing: Upon receipt of an appeal of an administrative decision by the zoning administrator, the appeals hearing officer shall schedule and hold a public hearing in accordance with the standards and procedures for conduct of the public hearing set forth in chapter 21A.10 of this title.

2. Notice Of Appeals Of Administrative Decisions Of The Historic Landmark Commission Or Planning Commission: Appeals from a decision of the historic landmark commission or planning commission are based on evidence in the record. Therefore, testimony at the appeal meeting shall be limited to the appellant and the respondent.

a. Upon receipt of an appeal of a decision by the historic landmark commission or planning commission the appeals hearing officer shall schedule a public meeting to hear arguments by the appellant and respondent. Notification of the date, time and place of the meeting shall be given to the appellant and respondent a minimum of twelve (12) calendar days in advance of the meeting.

b. The city shall give e-mail notification, or other form of notification chosen by the appeals hearing officer, a minimum of twelve (12) calendar days in advance of the hearing to any organization entitled to receive notice pursuant to title 2, chapter 2.60 of this code.

E. Standard Of Review:

1. The standard of review for an appeal, other than as provided in subsection E2 of this section, 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.

2. An appeal from a decision of the historic landmark commission or planning commission shall be based on the record made below.

- a. No new evidence shall be heard by the appeals hearing officer unless such evidence was improperly excluded from consideration below.
- b. The appeals hearing officer shall review the decision based upon applicable standards and shall determine its correctness.
- c. The appeals hearing officer shall uphold the decision unless it is not supported by substantial evidence in the record or it violates a law, statute, or ordinance in effect when the decision was made.

F. Burden Of Proof: The appellant has the burden of proving the decision appealed is incorrect.

G. Action By The Appeals Hearing Officer: The appeals hearing officer shall render a written decision on the appeal. Such decision may reverse or affirm, wholly or in part, or may modify the administrative decision. A decision by the appeals hearing officer shall become effective on the date the decision is rendered.

H. Notification Of Decision: Notification of the decision of the appeals hearing officer shall be sent by mail to all parties to the appeal within ten (10) days of the appeals hearing officer's decision.

I. Record Of Proceedings: The proceedings of each appeal hearing shall be recorded on audio equipment. The audio recording of each appeal hearing shall be kept for a minimum of sixty (60) days. Upon the written request of any interested person, such audio recording shall be kept for a reasonable period of time beyond the sixty (60) day period, as determined by the appeals hearing officer. Copies of the tapes of such hearings may be provided, if requested, at the expense of the requesting party. The appeals hearing officer may have the appeal proceedings contemporaneously transcribed by a court reporter.

J. Appeals: Any person adversely affected by a final decision made by the appeals hearing officer may file a petition for review of the decision with the district court within thirty (30) days after the decision is rendered.

K. Policies And Procedures: The planning director shall adopt policies and procedures, consistent with the provisions of this section, for processing appeals, the conduct of an appeal hearing, and for any other purpose considered necessary to properly consider an appeal. (Ord. 54-14, 2014: Ord. 58-13, 2013: Ord. 61-12, 2012)

21A.16.040: APPEAL OF DECISION:

Any person adversely affected by a final decision made by the appeals hearing officer may file a petition for review of the decision with the district court within thirty (30) days after the decision is rendered. (Ord. 8-12, 2012)

21A.16.050: STAY OF DECISION:

The appeals hearing officer may stay the issuance of any permits or approvals based on its decision for thirty (30) days or until the decision of the district court in any appeal of the decision. (Ord. 8-12, 2012)

21A.46.160: BILLBOARDS:

A. 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.

B. Definitions: The definitions in this section apply in addition to those in section 21A.46.020 of this chapter.

BILLBOARD: A form of an off premises sign. A freestanding ground sign located on industrial, commercial or residential property if the sign is designed or intended to direct attention to a business, product or service that is not sold, offered or existing on the property where the sign is located.

BILLBOARD BANK: An accounting system established by the city to keep track of the number and square footage of nonconforming billboards removed pursuant to this chapter.

BILLBOARD CREDIT: An entry into a billboard owner's billboard bank account that shows the number and square footage of demolished nonconforming billboards.

BILLBOARD OWNER: The owner of a billboard in Salt Lake City.

DWELL TIME: The length of time that elapses between text, images, or graphics on an electronic billboard or electronic sign.

ELECTRONIC BILLBOARD: Any off premises sign, video display, projected image, or similar device with text, images, or graphics generated by solid state electronic components. Electronic billboards include, but are not limited to, billboards that use light emitting diodes (LED), plasma displays, fiber optics, or other technology that results in bright, high resolution text, images, and graphics.

ELECTRONIC SIGN: Any on premises sign, video display, projected image, or similar device with text, images, or graphics generated by solid state electronic components. Electronic signs include, but are not limited to, signs that use light emitting diodes (LED), plasma displays, fiber optics, or other technology that results in bright, high resolution text, images, and graphics.

EXISTING BILLBOARD: A billboard which was constructed, maintained and in use or for which a permit for construction was issued as of July 13, 1993.

FOOT-CANDLE: The English unit of measurement for luminance, which is equal to one lumen, incident upon an area of one square foot.

GATEWAY: The following streets or highways within Salt Lake City:

1. Interstate 80;
2. Interstate 215;

3. Interstate 15;
4. 4000 West;
5. 5600 West;
6. 2100 South Street from Interstate 15 to 1300 East;
7. The 2100 South Expressway from I-15 west to the city limit;
8. Foothill Drive from Guardsman Way to Interstate 80;
9. 400 South from Interstate 15 to 800 East;
10. 500 South from Interstate 15 to 700 East;
11. 600 South from Interstate 15 to 700 East;
12. 300 West from 900 North to 900 South;
13. North Temple from Main Street to Interstate 80;
14. Main Street from North Temple to 2100 South Street;
15. State Street from South Temple to 2100 South; and
16. 600 North from 800 West to 300 West;

ILLUMINANCE: The intensity of light falling on a subsurface at a defined distance from the source.

MOTION: The depiction of movement or change of position of text, images, or graphics. Motion shall include, but not be limited to, visual effects such as dissolving and fading text and images, running sequential text, graphic bursts, lighting that resembles zooming, twinkling, or sparkling, changes in light or color, transitory bursts of light intensity, moving patterns or bands of light, expanding or contracting shapes, and similar actions.

NEW BILLBOARD: A billboard for which a permit to construct is issued after December 31, 1993.

NONCONFORMING BILLBOARD: An existing billboard which is located in a zoning district or otherwise situated in a way which would not be permitted by the provisions of this chapter.

SPECIAL GATEWAY: The following streets or highways within Salt Lake City:

1. North Temple between 600 West and 2200 West;
2. 400 South between 200 East and 800 East;
3. State Street between 600 South and 2100 South; and
4. Main Street between 600 South and 2100 South.

TEMPORARY EMBELLISHMENT: An extension of the billboard resulting in increased square footage as part of an artistic design to convey a specific message or advertisement.

TWIRL TIME: The time it takes for static text, images, and graphics on an electronic billboard or electronic sign to change to a different text, images, or graphics on a subsequent sign face.

C. Limit On The Total Number Of Billboards: No greater number of billboards shall be allowed in Salt Lake City than the number of existing billboards.

D. Permit Required For Removal Of Nonconforming Billboards:

1. Permit: Nonconforming billboards may be removed by the billboard owner only after obtaining a permit for the demolition of the nonconforming billboard.
2. Application: Application for demolition shall be on a form provided by the zoning administrator.
3. Fee: The fee for demolishing a nonconforming billboard shall be as shown on the Salt Lake City consolidated fee schedule.

E. Credits For Nonconforming Billboard Removal: After a nonconforming billboard is demolished pursuant to a permit issued under subsection D1 of this section, or its successor, the city shall create a billboard bank account for the billboard owner. The account shall show the date of the removal and the zoning district of the demolished nonconforming billboard. The account shall reflect billboard credits for the billboard and its square footage. Demolition of a conforming billboard shall not result in any billboard credit.

F. Priority For Removal Of Nonconforming Billboards: Nonconforming billboards shall be removed subject to the following priority schedule:

1. Billboards in districts zoned residential, historic, residential R-MU or downtown D-1, D-3 and D-4 shall be removed first;
2. Billboards in districts zoned commercial CN or CB, or gateway or on gateways shall be removed second;
3. Billboards which are nonconforming for any other reason shall be removed last; and
4. A billboard owner may demolish nonconforming billboards of a lower priority before removing billboards in a higher priority; however, the billboard credits for removing the lower priority billboard shall not become effective for use in constructing a new billboard until two (2) billboards specified in subsection F1 of this section, or its successor, with a total square footage equal to or greater than the lower priority billboard, are credited in the billboard owner's billboard bank account. If a billboard owner has no subsection F1 of this section, or its successor, nonconforming billboards, two (2)

subsection F2 of this section, or its successor, priority billboards may be credited in the billboard owner's billboard bank account to effectuate the billboard credits of a subsection F3 of this section, or its successor, billboard to allow the construction of a new billboard. For the purposes of this section, the two (2) higher priority billboards credited in the billboard bank account can be used only once to effectuate the billboard credits for a lower priority billboard.

G. Life Of Billboard Credits: Any billboard credits not used within thirty six (36) months of their creation shall expire and be of no further value or use except that lower priority credits effectuated pursuant to subsection F4 of this section, or its successor, shall expire and be of no further value or use within sixty (60) months of their initial creation.

H. Billboard Credits Transferable: A billboard owner may sell or otherwise transfer a billboard and/or billboard credits. Transferred billboard credits which are not effective because of the priority provisions of subsection F of this section, or its successor, shall not become effective for their new owner until they would have become effective for the original owner. The transfer of any billboard credits do not extend their thirty six (36) month life provided in subsection G of this section, or its successor.

I. Double Faced Billboards: Demolition of a nonconforming billboard that has two (2) advertising faces shall receive billboard credits for the square footage on each face, but only as one billboard.

J. New Billboard Construction: It is unlawful to construct a new billboard other than pursuant to the terms of this chapter. In the event of a conflict between this chapter and any other provision in this code, the provisions of this chapter shall prevail.

K. Permitted Zoning Districts: New billboards may be constructed only in the area identified on the official billboard map.

L. New Billboard Permits:

1. Application: Anyone desiring to construct a new billboard shall file an application on a form provided by the zoning administrator.
2. Fees: The fees for a new billboard construction permit shall be:
 - a. Building permit and plan review fees required by the uniform building code as adopted by the city; and

b. Inspection tag fees as shown on the Salt Lake City consolidated fee schedule.

M. Use Of Billboard Credits:

1. A new billboard permit shall only be issued if the applicant has billboard credits of a sufficient number of square feet and billboards to allow construction of the new billboard.
2. When the permit for the construction of a new billboard is issued, the zoning administrator shall deduct from the billboard owner's billboard bank account:
 - a. The square footage of the new billboard; and
 - b. The number of billboards whose square footage was used to allow the new billboard construction.
3. If the new billboard uses less than the entire available billboard credits considering both the number of billboards and square footage, any remaining square footage shall remain in the billboard bank.

N. New Billboards Prohibited On Gateways: Except as provided in subsection O of this section, or its successor, no new billboard may be constructed within six hundred feet (600') of the right of way of any gateway.

O. Special Gateway Provisions:

1. If a nonconforming billboard is demolished within a special gateway, the billboard owner may construct a new billboard along the same special gateway in a zoning district equal to or less restrictive than that from which the nonconforming billboard was removed and subject to subsections P, Q, R and S of this section, provided that the size of the new billboard does not exceed the amount of billboard credits in the special gateway billboard bank.
2. The demolition of a nonconforming billboard pursuant to this section shall not accrue billboard credits within the general billboard bank. Credits for a billboard demolished or constructed within a special gateway shall be tracked within a separate bank account for each special gateway. A permit for the construction of a new billboard pursuant to this section must be taken out within thirty six (36) months of the demolition of the nonconforming billboard.

P. Maximum Size: The maximum size of the advertising area of any new billboard shall not exceed fifteen feet (15') in height and fifty feet (50') in width.

Q. Temporary Embellishments:

1. Temporary embellishments shall not exceed ten percent (10%) of the advertising face of any billboard, and shall not exceed five feet (5') in height above the billboard structure.
2. No temporary embellishment shall be maintained on a billboard more than twelve (12) months.

R. Height: The highest point of any new billboard, excluding temporary embellishments shall not be more than:

1. Forty five feet (45') above the existing grade; or
2. If a street within one hundred feet (100') of the billboard, measured from the street at the point at which the billboard is perpendicular to the street, is on a different grade than the new billboard, twenty five feet (25') above the pavement elevation of the street.
3. If the provisions of subsection R2 of this section, or its successor subsection, apply to more than one street, the new billboard may be the higher of the two (2) heights.

S. Minimum Setback Requirements: All freestanding billboards shall be subject to pole sign setback requirements listed for the district in which the billboard is located. In the absence of setback standards for a particular district, freestanding billboards shall maintain a setback of not less than five feet (5') from the front or corner side lot line. This setback requirement shall be applied to all parts of the billboard, not just the sign support structure.

T. Spacing:

1. 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;
2. Large Signs: Billboards with an advertising face greater than three hundred (300) square feet in size shall not be located closer than eight hundred (800) linear feet from any other billboard, small or large, on the same side of the street.
3. Electronic Billboards: Electronic billboards shall not be located closer than one thousand six hundred (1,600) linear feet from any other electronic billboard on the same or opposite side of the street.

U. Electronic Billboards:

1. Prohibitions: Except as provided in subsection U2 of this section, after the effective date of this subsection U:
 - a. No electronic billboard shall be constructed or reconstructed for any reason, and

- b. The conversion, remodeling, or rehabilitation of any existing billboard to an electronic format is prohibited.
- 2. Standards When Construction/Conversion Required By Law: If after the effective date of this subsection U the city is required by law to allow construction of a new electronic billboard, or to allow conversion of an existing billboard to an electronic format, any such electronic billboard shall be operated pursuant to the following standards:
 - a. Any motion of any kind is prohibited on an electronic sign face. Electronic billboards shall have only static text, images, and graphics.
 - (1) The dwell time of any text, image, or display on an electronic billboard may not exceed more than once every eight (8) seconds. Twirl time between subsequent text, images, or display shall not exceed one-fourth (0.25) second.
 - (2) The illumination of any electronic billboard shall not increase the ambient lighting level more than three-tenths (0.3) foot-candle when measured by a foot-candle meter perpendicular to the electronic billboard face at:
 - (A) One hundred fifty feet (150') for an electronic billboard with a surface area of not more than two hundred forty two (242) square feet;
 - (B) Two hundred feet (200') for an electronic billboard with a surface area greater than two hundred forty two (242) square feet but not more than three hundred seventy eight (378) square feet;
 - (C) Two hundred fifty feet (250') for an electronic billboard with a surface area greater than three hundred seventy eight (378) square feet but not more than six hundred seventy two (672) square feet; and
 - (D) Three hundred fifty feet (350') for an electronic billboard with a surface area greater than six hundred seventy two (672) square feet.
 - b. Electronic billboards may not be illuminated or lit between the hours of twelve o'clock (12:00) midnight and six o'clock (6:00) A.M. if they are located in, or within six hundred feet (600') of a residential, mixed use, downtown, Sugar House business district, gateway, neighborhood commercial, community business, or community shopping center zoning district.
 - c. Controls shall be provided as follows:
 - (1) All electronic billboards shall be equipped with an automatic dimmer control or other mechanism that automatically controls the sign's brightness and display period as provided above.
 - (2) Prior to approval of any permit to operate an electronic billboard, the applicant shall certify that the sign has been tested and complies with the motion, dwell time, brightness, and other requirements herein.
 - (3) The owner and/or operator of an electronic billboard shall submit an annual report to the city certifying that the sign complies with the motion, dwell time, brightness, and other requirements herein.

V. Landscaping In Residential And Commercial CN And CB Zoning Districts: Properties in any residential zone and commercial CN or CB zones on which a billboard is the only structure shall be landscaped as required by sections 21A.26.020 and 21A.26.030 and chapter 21A.48 of this title, or its successor chapter. No portion of such property shall be hard or gravel surfaced.

W. Landscaping In Other Zoning Districts: Property in all districts other than as specified in subsection V of this section, or its successor subsection, upon which a billboard is the only structure, shall be landscaped from the front of the property to the deepest interior point of the billboard for fifty (50) linear feet along the street frontage distributed, to the maximum extent possible, evenly on each side of the billboard.

X. Xeriscape Alternative: If all the properties adjacent to and across any street from the property for which billboard landscaping is required pursuant to subsection W of this section, or its successor subsection, are not developed or, if a water line for irrigation does not exist on the property or in the street right of way adjacent to such property, the zoning administrator may authorize xeriscaping as an alternative for the required landscaping.

Y. Existing Billboard Landscaping: Existing billboards shall comply with the landscaping provisions of this section on or before January 1, 1996.

Z. Compliance With Tree Stewardship Ordinance: Construction, demolition or maintenance of billboards shall comply with the provisions of the Salt Lake City tree stewardship ordinance.

AA. Subdivision Registration: To the extent that the lease or other acquisition of land for the site of a new billboard may be determined to be a subdivision pursuant to state statute no subdivision plat shall be required and the zoning administrator is authorized to approve, make minor subsequent amendments to, and record as necessary, such subdivision.

BB. Special Provisions:

1. Applicability: The provisions of this section shall apply to specified billboards located:
 - a. Four (4) existing billboards between 1500 North and 1800 North adjacent to the west side of Interstate 15; and
 - b. One existing billboard on the east side of Victory Road at approximately 1100 North.
2. General Applicability: Except as modified by this section, all other provisions of this chapter shall apply to the five (5) specified billboards.
3. Special Priority: The five (5) specified billboards shall be considered as gateway billboards for the purposes of the priority provisions of subsection F of this section, or its successor subsection.

4. Landscaping: The five (5) specified billboards shall be landscaped pursuant to the provisions of subsection W of this section, or its successor subsection.

CC. State Mandated Relocation Of Billboards: Except as otherwise authorized herein, existing billboards may not be relocated except as mandated by the requirements of Utah state law. (Ord. 4-12, 2012; Ord. 24-11, 2011)