

## Senate Bill 144: STOPS CONDEMNATION WITHOUT COMPENSATION BY MUNICIPALITIES

The Utah Billboard Industry has recently determined that several municipalities have recently employed a strategy of directly contacting the landlords of billboard owners who have placed billboards on their properties in an effort to have these landlords remove the billboard from their properties.

The methods these municipalities employ include:

- Offering the landlords tax payer funds (cash) to break or not renew their leases with billboard owners,
- offering preferential treatment in the permitting process for building projects unrelated to the billboard if the landlord will terminate or not renew their billboard lease
- requiring private citizens who purchase property from municipalities to record restrictive covenants preventing future billboard placement on the property as a condition of the sale.

These practices are unethical, constitute interference with contractual relations and are governmental takings **without** compensation being awarded to the billboard owners.

**Senate Bill 144 is designed to stop this from occurring.**

Magot Becker/Lynn Pace  
Email Exchange about meeting  
with Reagan Landlord to use TAX

Smedley, Nicole

From: Everitt, David  
Sent: Monday, March 30, 2015 6:06 PM  
To: Akerlow, Michael  
Cc: Love, Jill; Pace, Lynn; Bourdeaux, Nichol  
Subject: Re: 4th South Billboard

Dollars to  
convince  
Landlord  
not to renew

Sounds good, we'll want the attorney's office in on the negotiations as well.

On Mar 30, 2015, at 9:28 AM, Akerlow, Michael <Michael.Akerlow@slc.gov.com> wrote:

You had mentioned it to me earlier but the Mayor hadn't responded at that time.

We'd like to be involved up front to help through the negotiations. Lynn should include James Rich and Dan Rip.

Thanks,

Michael Akerlow  
801-535-7966

From: <Love>, Jill <Jill.Love@slc.gov.com>  
Date: Monday, March 30, 2015 at 9:08 AM  
To: Michael Akerlow <michael.akerlow@slc.gov.com>  
Cc: "Pace, Lynn" <lynn.pace@slc.gov.com>, David Everitt <david.everitt@slc.gov.com>, Nichol Bourdeaux <nichol.bourdeaux@slc.gov.com>  
Subject: Fwd: 4th South Billboard

Michael is your crew in the loop on this one?

Sent from my iPad

Begin forwarded message:

From: "Becker, Ralph" <Ralph.Becker@slc.gov.com>  
Date: March 30, 2015 at 7:32:54 AM PDT  
To: "Pace, Lynn" <lynn.pace@slc.gov.com>, "Love, Jill" <Jill.Love@slc.gov.com>  
Cc: "Everitt, David" <David.Everitt@slc.gov.com>, "Bourdeaux, Nichol" <Nichol.Bourdeaux@slc.gov.com>  
Subject: RE: 4th South Billboard

Lynn,

If we can buy out the billboard for a reasonable price, I would like for Salt Lake City to do that.

Thanks,

Ralph

From: Pace, Lynn  
Sent: Wednesday, March 25, 2015 5:17 PM  
To: Becker, Ralph; Love, Jill

CC: Everitt, David; Bourdeaux, Nichol  
Subject: FW: 4th South Billboard

Ralph, sometime ago we talked about the possibility of acquiring and removing the existing billboard located just east of the Dunkin Donuts store on 400 South and 200 East. Doug Dansie and I met with the owner again yesterday. He would rather remove the billboard than renew the lease, but at a price. (See his proposal below.) Are we interested? Although I assume that we can negotiate over the terms and the price to some degree, I think his offer below gives us a general idea as to the price range he would want. Let me know how you would like to proceed. Thanks, Lynn

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From: David Peters [mailto:dpeters@terratron.org]  
Sent: Tuesday, March 24, 2015 5:52 PM  
To: Pace, Lynn; Dansie, Doug  
Subject: 4th South Billboard

Lynn and Doug,

Thanks for the time today regarding 4<sup>th</sup> South. Just to reiterate what we discussed – the current proposal would be \$275,000 to remove the board and put a perpetual deed restriction on the property prohibiting future billboards. If Reagan did not get a replacement location within three years there would be another payment of \$100,000 for a total of \$375,000.

Timing-wise I'd like to propose the following schedule:

Confirm interest in proceeding by April 3<sup>rd</sup>

Seller to provide a draft agreement and deed restriction documentation by April 10<sup>th</sup>

Make modifications to the agreements and sign on or before April 24<sup>th</sup>.

Close by May 1<sup>st</sup>.

If you think this is doable please advise and I'll hold off on the lease extension discussions pending formal confirmation to proceed by April 3<sup>rd</sup>

Thanks again for your time today...

David

SLC Corp  
Contract with Reagan  
Outdoor Landlord

RECORDED

JUN 30 2015

PURCHASE AND SALE AGREEMENT

CITY RECORDER

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into to be effective the \_\_\_\_ day of June, 2015 (the "Effective Date"), by and between MERCURY INVESTMENTS LIMITED PARTNERSHIP, a Utah limited partnership ("Mercury"), TERRATRON, INC., a Utah corporation ("Terratron"), and SALT LAKE CITY CORPORATION, a municipal corporation organized and existing under the laws of the State of Utah ("Buyer"). Mercury and Terratron are sometimes referred to herein collectively as "Seller."

RECITALS

A. Seller is the owner of that certain parcel of real property located in Salt Lake City, Salt Lake County, Utah, consisting of approximately 0.15 acres located at approximately 219 East 400 South, Salt Lake City, Utah (the "Real Property"), which is more particularly described in Exhibit A attached hereto.

B. As of the Effective Date of this Agreement, there is located on the Real Property a billboard (the "Current Billboard") that is owned, operated and maintained by Reagan Outdoor, LLC, a Utah limited liability company ("Reagan"). Reagan's right to erect and maintain the Current Billboard on the Real Property arises pursuant to that certain Sign Agreement (the "Sign Agreement") dated December 15, 1975, by and between Dee's, Inc. ("Dee's") and Galaxy Outdoor Advertising, Inc. ("Galaxy"). Seller is the successor-in-interest to the rights of Dee's arising under the Sign Agreement, and Reagan is the successor-in-interest to the rights of Galaxy arising under the Sign Agreement.

C. Mercury and Terratron are parties to that certain Commercial Lease (the "Dunkin' Donuts Lease") dated February 14, 2013, by and between Mercury and Terratron, as the Landlord thereunder, and Sizzling Donuts, LLC, a Delaware limited liability company, doing business as "Dunkin' Donuts" ("Tenant"), which Dunkin' Donuts Lease pertains to the Real Property, together with certain additional parcels of real property adjacent to the Real Property (collectively referred to herein as the "Adjacent Property"), which Adjacent Property is more particularly described in Exhibit B attached hereto.

D. Terratron is the lessee under a Ground Lease with First Right to Purchase dated August 3, 1982, as amended by the First Amendment to Ground Lease with First Right to Purchase dated February 12, 2013 (collectively referred to herein as the "Ground Lease"). Anderson Investment Corporation, a Utah corporation ("Anderson"), is the lessor under the Ground Lease. Pursuant to the terms of the Dunkin' Donuts Lease, the Tenant specifically acknowledged and agreed that the leased premises under the Dunkin' Donuts Lease shall not include the Current Billboard that is the subject of the Sign Agreement. Pursuant to the terms of the Dunkin' Donuts Lease, Tenant's use of the Real Property and the Adjacent Property is expressly limited to the uses consistent with the national brand and requirements of a Dunkin' Donuts store, together with the accompanying use of the existing drive-thru facility. Mercury and Terratron have the right under the Dunkin' Donuts Lease to prevent the Tenant from erecting a billboard sign upon any portion of the Real Property or the Adjacent Property.

4851-1259-9235.1

SLCC - 000169

E. Seller desires to sell to Buyer, and Buyer desires to acquire and purchase from Seller a property right pertaining to the Real Property and the Adjacent Property, consisting of all Seller's right to allow, permit, remove and/or prevent the presence of the Current Billboard and any future billboard signs on the Real Property and the right to prevent any future billboard signs on the Adjacent Property throughout the duration of the Dunkin' Donuts Lease (collectively referred to herein as the "Property Right").

F. Seller is willing to sell to Buyer, and Buyer is willing to purchase and acquire from Seller, the Property Right on the terms and conditions hereinafter set forth.

#### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, the Purchase Price defined below and other good and valuable consideration, the sufficiency of which Buyer and Seller hereby acknowledge, Buyer and Seller hereby covenant and agree as follows:

1. **Sale of the Property Right.** Buyer hereby agrees to purchase from Seller, and Seller hereby agrees to sell to Buyer, the Property Right for the Purchase Price hereinafter defined. The Property Right shall consist of all of Seller's right to allow, permit, remove and/or prevent the construction, placement, operation, maintenance and use of billboard signs upon any portion of the Real Property and also all of Seller's right to allow, permit, remove and/or prevent the construction, placement, operation, maintenance and use of billboard signs upon any portion of the Adjacent Property throughout the remainder of the term of the Dunkin' Donuts Lease, as it may be extended, including without limitation the right to prevent the Tenant under the Dunkin' Donuts Lease from erecting or allowing the presence of any billboard signs on the Restricted Property throughout the duration of the Dunkin' Donuts Lease. The Property Right to be sold by Seller to Buyer: (a) shall be perpetual in duration as it pertains to the Real Property and shall be appurtenant to and shall run with the Real Property, and (b) shall continue in effect as it pertains to the Adjacent Property throughout the duration of the Dunkin' Donuts Lease, as it may be extended. The assignment and granting by Seller to Buyer of the Property Right, as it pertains to the Real Property, shall be evidenced by the execution, acknowledgement and recording in the Office of the Recorder of Salt Lake County, Utah, by Seller of a written Assignment and Declaration of Restrictive Covenant in the form attached hereto as Exhibit C pertaining to the Real Property, whereby Seller grants and assigns to Buyer the Property Right as it pertains to the Real Property, together with the authority to exercise, control and enforce the Property Right in perpetuity as it pertains to the Real Property. The assignment and granting by Seller to Buyer of the Property Right, as it pertains to the Adjacent Property, shall be evidenced by the execution, acknowledgement and recording in the Office of Recorder of Salt Lake County, Utah, by Seller of a written Assignment and Declaration of Restrictive Covenant in the form attached hereto as Exhibit D pertaining to the Adjacent Property, whereby Seller grants and assigns to Buyer the Property Right as it pertains to the Adjacent Property, together with the authority to exercise, control and enforce the Property Right as it pertains to the Adjacent Property throughout the duration of the Dunkin' Donuts Lease, as it may be extended.

2. **Purchase Price.** The Purchase Price (the "Purchase Price") to be paid by Buyer to Seller for the Property Right shall be Three Hundred Fifty Thousand Dollars (\$350,000), which shall be payable by Buyer to Seller as follows: Two Hundred Fifty Thousand Dollars

(\$250,000) of the Purchase Price shall be payable by Buyer to Seller within ten (10) days following the last to occur of: (i) the termination of Sign Agreement and (ii) the removal from the Real Property of the Current Billboard. The additional One Hundred Thousand Dollars (\$100,000) of the Purchase Price shall be payable by Buyer to Seller within ten (10) days following the expiration of thirty-six (36) months after the date on which the Current Billboard is removed from the Property, provided that within 36 months of the demolition of the Current Billboard, Reagan does not construct a new billboard within the "400 South Special Gateway" identified as 400 South between 200 East and 800 East utilizing the billboard credit obtained by Reagan for the demolition of the Current Billboard pursuant to the provisions of Salt Lake City Ordinance No. 21A.46.160.O (referred to herein as the "Special Gateway Provisions"). Following the expiration of 36 months after the demolition of the Current Billboard and the failure of Reagan to obtain a permit for the construction of a new billboard pursuant to the Special Gateway Provisions within the 400 South Special Gateway during such 36 months, Buyer shall, subject to the appropriation condition in Section 11 of this Agreement, be obligated to pay to Seller the additional \$100,000 of the Purchase Price, within sixty (60) days following the expiration of such 36 month period.

3. Title Report. Within 5 days after the Effective Date, Seller will cause First American Title Insurance Company, National Commercial Services, 215 South State Street, Suite 380, Salt Lake City, Utah 84111, Attn: Aaron C. Hansen (the "Title Company") to deliver to Buyer a Title Report (the "Title Report") pertaining to the Real Property and the Adjacent Property, evidencing that Mercury is the owner of the Real Property and evidencing that Seller has the right to sell, assign and grant to Buyer the Property Right as contemplated by this Agreement. Buyer will have until 20 days after the Effective Date to notify Seller in writing of any objections to title ("Title Objections") based upon the Title Report. Buyer's notice of title objections ("Buyer's Title Notice") will set forth the specific basis for Buyer's objections. If Buyer fails to notify Seller of any Title Objections within 20 days after the Effective Date, then Buyer will be deemed to be satisfied with the condition of title and to have waived all Title Objections. If Buyer does deliver to Seller Buyer's Title Notice within 20 days after the Effective Date, Buyer will be deemed to have waived any objections to matters shown on the Title Commitment that are not listed or described in Buyer's Title Notice. As to those Title Objections timely raised by Buyer, Seller may, within 15 days of Seller's receipt of Buyer's Title Notice, notify Buyer ("Seller's Title Response") that Seller, for any reason in Seller's sole and absolute discretion, will either (a) resolve the Title Objections on or before Closing; or (b) decline to cure the Title Objections on or before the Closing. Seller's failure to deliver to Buyer Seller's Title Response within 15 days of Seller's receipt of Buyer's Title Notice will be deemed Seller's election to decline to cure the Title Objections. Within five days after the later of (y) Buyer's receipt of Seller's Title Response, or, (z) if Seller does not deliver to Buyer the Seller's Title Response, 15 calendar days after the date Buyer delivers to Seller the Buyer's Title Notice, Buyer will, at Buyer's sole option, either (A) notify Seller that Buyer elects to terminate this Agreement, in which event this Agreement will terminate, and neither Buyer nor Seller will have any further rights, liabilities or other obligations under this Agreement; or (B) notify Seller that Buyer elects to waive the Title Objections and proceed to Closing. Buyer's failure to send to Seller a written notice under either (A) or (B) above will be deemed to be Buyer's waiver of the Title Objections and Buyer's election to close on the purchase of the Property Right.

IN WITNESS WHEREOF, THIS PURCHASE AND SALE AGREEMENT has been executed by Buyer and Seller to be effective as of the Effective Date.

**BUYER:**

**SALT LAKE CITY CORPORATION, a Utah municipal corporation**

By: [Signature]  
Print Name: Ralph Becker Title: Mayor

Approved as to Form:  
Salt Lake City Attorney's Office

[Signature]  
Katherine Lewis, Senior City Attorney

6/26/15

Attest and Countersign:

[Signature]  
Assistant City Recorder

RECORDED  
JUN 30 2015  
CITY RECORDER



**SELLER:**

**MERCURY INVESTMENTS LIMITED PARTNERSHIP, a Utah limited partnership**

By: [Signature]  
Print Name: David Peters  
Title: General Partner

**TERRATON, INC., a Utah corporation**

By: [Signature]  
Print Name: David Peters  
Title: President

HB\_ATTY-#46224-v2-Purchase\_and\_Sale\_Agreement\_(Mercury\_Investments)

SALT LAKE CITY

allacher  
, 2019

Planner Doug Dansie Consulting

Pages 54..57

Page 56

Reagan  
Landlord

1 A That's what Mr. Dansie told me to do. The  
2 state suggested that -- that starting a year before  
3 the end of the lease, to send certified letters to  
4 Reagan so that they knew well ahead of time.

5 Q Okay. You don't need to send any more. But  
6 you can if you want to.

7 A Okay.

8 Q So Mr. Dansie told you sometime around  
9 November of 2017 that you ought to start sending  
10 termination notices?

11 A Yes.

12 Q Okay. And did you draft the termination  
13 notices?

14 A Yes.

15 Q Did you consult with an attorney?

16 A No.

17 Q Did you have Bryan or Mark review the  
18 termination notices?

19 A No.

20 Q Did you inform them that you sent the  
21 termination notices?

22 A I think so.

23 Q How?

24 A Verbally.

25 Q Should we take a quick break?



# South Salt Lake City Matter

Notwithstanding the foregoing, Tenant acknowledges that as part of certain approvals obtained from the City of South Salt Lake in connection with the development of the Property, it was committed by the landlord of the Ground Lease to the City of South Salt Lake (the "City") that the Billboard would be removed. Tenant has informed us that it has reached out to the City indicating that the Billboard would, in fact, not be removed and the City is not currently requesting removal of the Billboard. If the City, in the future, requests removal of the Billboard in accordance with the conditions to approval for the development of the Property, Maverik and Tenant agree to work cooperatively to oppose removal of the Billboard, but such cooperation does not include opposition by litigation, which Tenant may elect to undertake but which is not required of us to participate in or be a part of in any way. Ultimately, if Tenant is unable to effectively oppose removal of the Billboard and the City elects to enforce such requirement, this Lease will terminate and be of no further force or effect as of the date of removal of the Billboard and Tenant will remove the Billboard in accordance with the terms and conditions of this Lease.

# SLC Corp Current Ordinance

## 8 REMOVAL OF BILLBOARDS

Although billboards are prohibited within the TSA zoning district, a number of billboards are present within the transit station areas. As part of redevelopment of properties, the removal of existing billboards is encouraged. Billboards often negatively impact the development potential of a property, primarily because a lease may include statements that prohibit blocking the view of the billboard which decreases the potential for redevelopment of the property.

- A. A project that includes redevelopment of a site containing a billboard shall have the following points added to its development score:
1. An existing billboard is legally removed by the developer as part of a redevelopment project: 10 points.

**This guideline applies to the Core and Transition Area**



Billboards may lower the development potential of property.



Billboards can reduce the aesthetic quality of a well designed landscape.

Promotes Personal Property Takings without Compensation.

Punitive Deed Restriction  
Eliminating Billboard use



as A Condition of Sale

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## SALT LAKE CITY COUNCIL AGENDA

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### FORMAL MEETING

**December 8, 2020**

**Tuesday 7:00 PM**

**This meeting will be an electronic meeting pursuant to the Salt Lake City  
Emergency Proclamation.**  
[SLCCouncil.com](http://SLCCouncil.com)

### CITY COUNCIL MEMBERS:

**Chris Wharton, Chair**

District 3

**James Rogers**

District 1

**Dan Dugan**

District 6

**Andrew Johnston, Vice Chair**

District 2

**Ana Valdemoros**

District 4

**Darin Mano**

District 5

**Amy Fowler**

District 7

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**2. Ordinance: Street Vacation Near 800 N and Warm Springs Road**

The Council will consider adopting an ordinance that would close a portion of 800 North Street adjacent to I-15 and Warm Springs Road. The applicant owns the property to the north and proposes that the vacated area will be split between the owners to the north and south. The closure will not impact traffic or access. The subject right-of-way is no longer used as a roadway and is generally unoccupied. Petition No.: PLNPCM2019-00824

**FYI – Project Timeline:** (subject to change per Chair direction or Council discussion)

Briefing - Tuesday, October 20, 2020

Set Public Hearing Date - Tuesday, October 20, 2020

Hold hearing to accept public comment - Tuesday, December 1, 2020 at 7 p.m.

TENTATIVE Council Action - Tuesday, December 8, 2020

Staff Recommendation - Refer to motion sheet(s).

**3. Ordinance: Dockless Shared Mobility**

The Council will consider adopting an ordinance that would regulate the use of electric scooters and other dockless, shared mobility devices in the City. The Council would also consider amending the Consolidated Fee Schedule as part of the dockless shared mobility device ordinance. Currently, dockless scooter companies operate under temporary operating agreements until an ordinance is passed. The latest version of a draft ordinance was sent to the Council in March 2020. The updated ordinance incorporates some feedback and concerns including additional requirements for safety features, insurance requirement changes, and language to better differentiate between scooters and devices – motorized or otherwise – used by individuals with reduced or specialized mobility, among other changes.

**FYI – Project Timeline:** (subject to change per Chair direction or Council discussion)

Briefing - Tuesday, May 5, 2020; Tuesday, June 16, 2020; Tuesday, August 11, 2020; and Tuesday, October 13, 2020

Set Public Hearing Date - Tuesday, July 7, 2020 and Tuesday, November 10, 2020

Hold hearing to accept public comment - Tuesday, July 14, 2020 at 7 p.m.;

Tuesday, August 11, 2020 at 6 p.m.; Tuesday, December 1, 2020 at 7 p.m.

TENTATIVE Council Action - Tuesday, December 8, 2020

Staff Recommendation - Refer to motion sheet(s).



# MOTION SHEET

CITY COUNCIL of SALT LAKE CITY

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**TO:** City Council Members

**FROM:** Brian Fullmer  
Policy Analyst

**DATE:** December 8, 2020

**RE:** **Street Vacation Near 800 North and Warm Springs Road**  
**PLNPCM2019-00824**

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**MOTION 1 (adopt with deed restriction)**

The City has had a long-standing policy objective of protecting its viewshed, limiting the number of billboards within its boundaries, and ensuring that City-owned property is developed to achieve those policy objectives. I move that the Council formalize a specific policy ensuring that City-owned property located in viewshed areas or adjacent to critical gateway areas of the City, will include a restriction on billboards, and that restriction will run with the land and be recorded prior to disposition of that property.

Based on those longstanding policy objectives, and based on the Council's desire to formalize this policy prior to disposition of City-owned property, I further move that the Council adopt an ordinance vacating the property subject to the Administration recording a deed restriction before selling the property that stipulates billboards are not allowed on the property and that condition runs with the land.

**MOTION 2 (adopt without deed restriction)**

I move that the Council adopt an ordinance vacating the subject property.

**MOTION 3 (reject)**

I move that the Council reject an ordinance vacating the subject property.

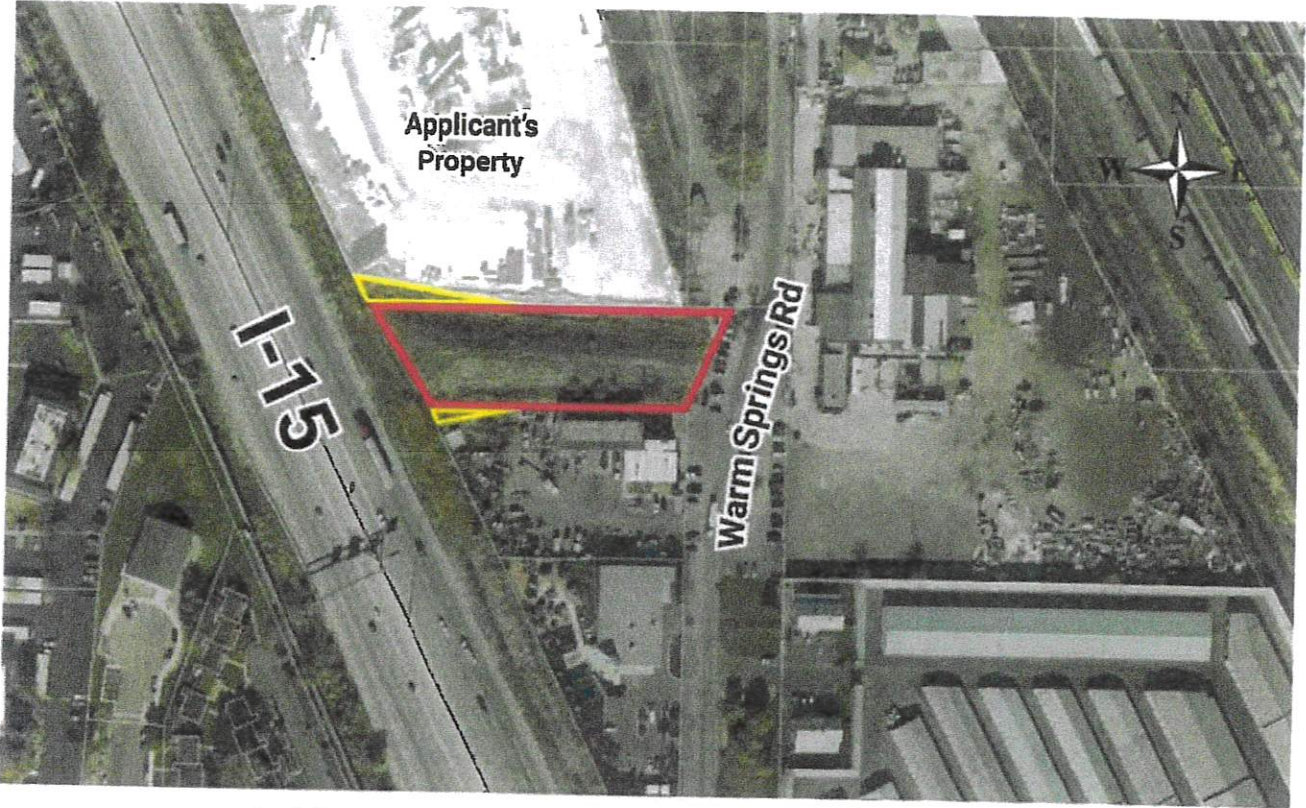
**MOTION 4 (defer)**

I move that the Council defer action to a future meeting.

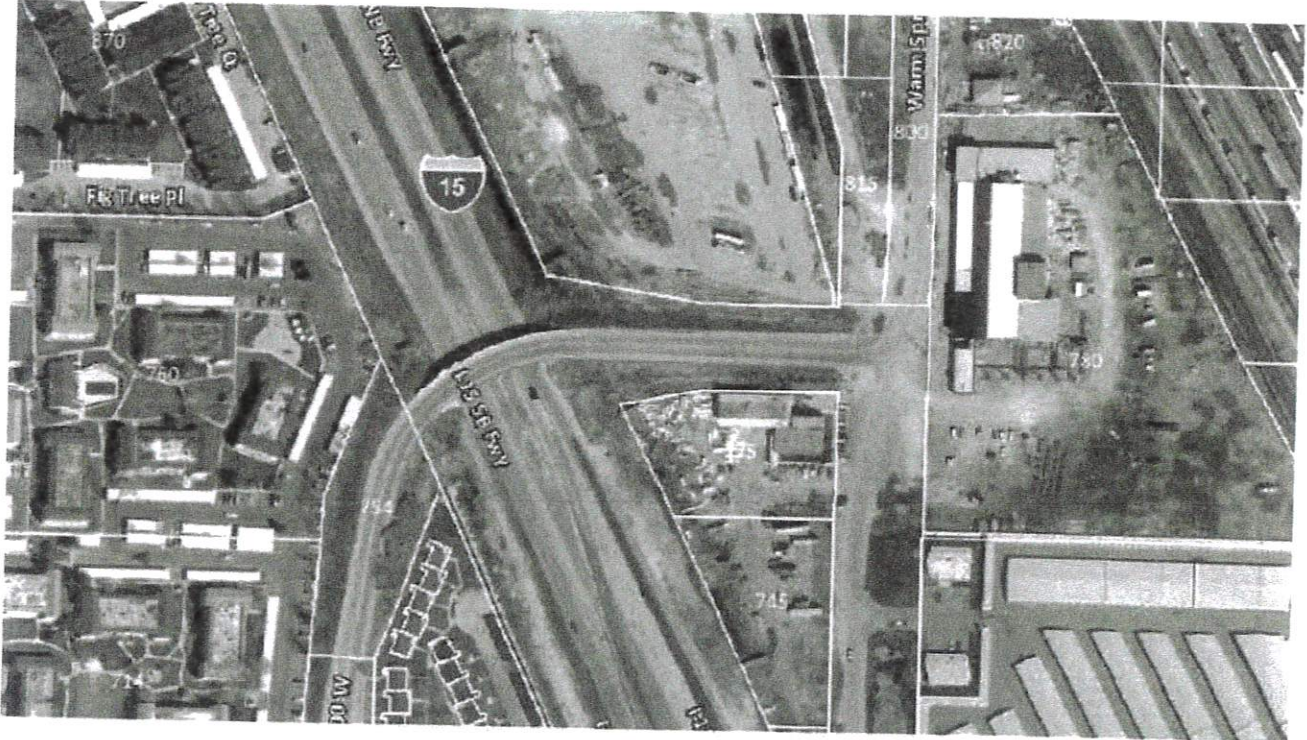


**POLICY QUESTION**

1. Is the Council supportive of closing the subject section of 800 North?



*Aerial image showing approximate subject property outlined in red. Yellow triangular-shaped "flares and fins" are owned by UDOT.*



In addition, “[w]hen all federal claims have been dismissed, the court may, and usually should, decline to exercise [supplemental] jurisdiction over any remaining state claims.” *Smith v. City of Enid*, 149 F.3d 1151, 1156 (10th Cir. 1998); *see also* 28 U.S.C § 1367(c)(3). The court accordingly dismisses Plaintiff’s state-law claims without prejudice.

\* \* \*


This opinion should not be understood to condone Defendants’ actions or to suggest that they were not bare knuckled and underhanded. For although this court has a duty to vindicate those specific rights secured by the Constitution or other federal law, it does not have a roving commission to remedy all grievances and injustices.

Defendants’ motion to dismiss is **GRANTED**. Plaintiff’s federal claims are **DISMISSED WITH PREJUDICE**. Plaintiff’s state law claims are **DISMISSED WITHOUT PREJUDICE**.

**IT IS SO ORDERED.**

DATED this 6th day of February, 2021.

BY THE COURT:



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Howard C. Nielson, Jr.  
United States District Judge