

Lehi city vs. Lehi moms: A 'muddy area' of the first amendment

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In June 2017, the Lehi Planning Commission approved a revised concept plan for developing the Traverse Mountain West Canyon area. Members of the commission expressed concern for the health and safety of current Traverse Mountain residents, but approved the plan to be put before Lehi City Council contingent on an environmental impact study and a dust mitigation study.

The concept plan requires “mass grading” of the area at approximately Gray Hawk Drive and Ravencrest Lane in Lehi to prepare the area for building. Like other mass grading projects in Lehi, the project is expected to kick up a lot of dust, which raises health concerns among residents. Some residents insist that the project is, in fact, a mine, which is illegal in such close proximity to residents, but Geneva Rock, which will be doing the grading, maintains it is not.

The plan was finally approved by Lehi City Council in January 2018, but only passed with three council members in favor and two against. The city commissioned a study

from the Utah Department of Health Environmental Epidemiology to study the health concerns, which include the possibility of residents inhaling crystalline silica. Long-term high level exposures of more than 1,000 micrograms of silica per cubic meter of air per year can lead to an irreversible lung disease called silicosis.

Sam LeFevre with the Environmental Epidemiology initially gave a presentation to Lehi City Council in August 2018, according to city council meeting minutes. LeFevre told the city council he believed the dust pollution would consist of “mining waste” containing “less toxic silica.”

A December letter to the mayor about the completed assessment caused quite a stir among residents. LeFevre wrote, “In light of the uncertainty present in our quick and limited initial assessment, we strongly recommend that any decisions for the POM relying on a health-based assessment be delayed until the more comprehensive assessment is completed.”

Some took this to mean that development plans should halt immediately, but LeFevre clarified to the Daily Herald that the letter was meant to simply inform the Lehi City Council that the assessment had “limitations” and should not be used to make any decisions regarding the development.

“That assessment, while accurate, is insufficient to be useful in fully understanding all of the potential health concerns,” LeFevre wrote to the Daily Herald in an email.

In February, according to Lehi City public information officer Cameron Boyle, Lehi Mayor Mark Johnson formally requested an air quality study through the Utah County Health Department, which will take at least a year to complete. For now, ground has not broken on the Traverse Mountain West Canyon development.

“We’re concerned about the health and safety of our residents,” Boyle said. “As this study continues out, we’ll see what the results are and if it says that there is a significant concern up there, obviously, (we) will evaluate that and take appropriate action.”

The mass grading part of the area development plan has received strong opposition from residents, in particular from a group formed in March 2018 called “Stop TM Residential Mining.” In February of this year, however, the group name was changed to “Lehi Moms and Allies for Clean Air” and became a chapter of the Utah Moms for Clean Air organization, a group founded by Cherise Udell, who lives in Salt Lake County. Udell said the moms who have been “fighting” the development plan called her in September and asked if she would come and help them.

“They have not been able to get any traction,” Udell said. “So they asked me to kind of come in and help them get more visibility in their fight.”

Udell has been working with the Lehi Moms since February. Although a handful of residents who are now members of the group are recorded as having attended city

council meetings in 2017 and 2018 to address their concerns with the development, the newly-formed group has not reached out to the city or requested a meeting with the mayor to address their concerns, according to city officials. Instead, they have been focused on “doing a number of things to increase the publicity and visibility of the issue,” Udell said.

The Lehi Moms group, along with their children, have used chalk art as a form of protest, writing messages on the sidewalks surrounding the city hall building.

The first time the group did a chalk art protest was on March 30 and the city washed it off. The following Tuesday, April 2, the group protested via chalk again, which the city washed off. The group came back a third time, on the weekend, to once again draw and write on the sidewalks outside the city hall building.

According to Boyle, a Lehi City Police officer went to the home of one of the residents involved to ask them to cease the activity and warn about the possibility of a criminal mischief citation if the activity was continued.

Udell said the officer was “belligerent,” “aggressive” and “rude” to the husband of one of the moms involved. Lehi City Police declined to comment on the matter directly. To date, nobody has been cited with criminal mischief for the incident. However, Udell has filed a complaint with the Utah ACLU, stating that the city violated the group’s constitutional right to protest.

“It’s a constitutional right that we have to air our grievances with our government, and we chose to air those grievances through chalk, and if they don’t send a police officer to everybody’s home who does chalk on the street, including a child doing hopscotch, then they are actually criticizing our message, not our medium,” Udell said.

It isn’t that simple. According to the ACLU, chalk art is not blanket protected by the first amendment, and there is a state statute about criminal mischief in regards to defacing property.

“Our attorney says that according to state statute, it’s within the right of the city to limit sidewalk chalk is is considered defacing property, even though it’s not permanent, it can be washed off, but it is considered an activity that they can fall under criminal mischief,” Boyle said. “So according to state statute, it is within the right of the city to limit those types of activities throughout the city.”

The state statute in question, statute 76-6-106, states that “critical infrastructure,” systems or property that is protected, includes “government operations and services.” According to the statute, “A person commits criminal mischief if the person ... intentionally damages, defaces, or destroys the property of another.”

Jason Stevenson, the strategic communications manager for ACLU Utah, said according to the ACLU’s research, there have been court rulings where it was said

municipalities had the right to “keep the aesthetics of public spaces clean and neat as possible, and have ruled that the sidewalk chalk does hamper that.” Basically, Stevenson said, in those court rulings the “aesthetic aspect” of keeping public spaces clean overruled the first amendment protest aspect of the sidewalk chalk and chalk art on public surfaces.

However, there have been recent cases, in Colorado in 2018, Minnesota in 2013 and Ohio in 2013 where courts ruled in favor of protesters.

The Colorado, Minnesota and Ohio court decisions show, Stevenson said, “that in order for the police or the municipality to enforce restriction on sidewalk chalk in front of city hall or that kind of a public space, they would actually have to show that they are enforcing it everywhere.”

Boyle said Lehi city has specifically chosen not to limit chalk art on all sidewalks around the city, but they have chosen to limit sidewalk chalk in areas like in front of buildings, “that are not a traditional public forum area.” Parks and sidewalks, Boyle said, would be considered a traditional public forum area and would not be regulated.

“We have determined that we will limit those activities in those non-traditional public forum areas, whereas the more traditional areas like a park or a sidewalk would not be would not be limited,” Boyle said. Non-traditional public forums, Boyle said, include business entrances or the entrance to city hall.

Boyle said the city wants to make sure the city campus stays clean outside of the buildings, as well as inside. He said one of the concerns with chalk art around city hall was that the chalk could be tracked in by employees and visitors, causing damage to the carpets. The chalk art would have been washed off, Boyle said, regardless of the message.

Stevenson said the case comes down to two things: first, if “criminal mischief,” a charge usually associated with something more permanent, like graffiti, is an appropriate response for sidewalk chalk, and second, whether or not having officers warn residents about being cited or washing the sidewalks is an appropriate use of city resources. But even those two things depend on several other factors.

“It depends on the statute that is used, it depends on what the people are charged with, it depends on the level of enforcement that the city has pursued in the past on this issue, and ultimately depends on several specific aspects of each case that comes before a judge or a court,” Stevenson said. “So it definitely is not as clear cut as either side would usually like to claim, but it is one of those muddy areas of the first amendment that still depends a lot on the facts of the situation.”

It remains to be seen what will happen with the chalk art protests and whether or not the ACLU will take the case. For now, Udell said the Lehi Moms will continue to organize and protest.

“As long as this (mass grading project) is still a possibility and children’s lives are in danger, we are not going to stop,” Udell said. “We are going to continue to make our voices heard in as many creative ways as possible.”

As for the city of Lehi, Boyle indicated the mayor would be happy to meet with the group to discuss their concerns.

“We want to be as responsive to our residents as we can. If they call and request a meeting with the mayor we’re happy to do that.”