

SALT LAKE CITY LAND USE APPEALS HEARING DECISION  
Case No. PLNHLC2017-00722  
Property Address 613 East 100 South  
APPEAL OF HISTORIC LANDMARK COMMISSION  
APPELLANT: Tate Siemer  
October 22, 2019

On August 1, 2019, the Salt Lake City Historic Landmarks Commission partially granted and partially denied a Certificate of Appropriateness for new construction at 613 East 100 South. Tate Siemer of Olympus Development, LLC (“Olympus”) appeals that part of the Landmark’s Decision denying approval for some parts of the project. Based on evidence in the record including the Staff Report, documents constituting the appeal by Olympus including the Landmark’s transcript, Salt Lake City’s response, and testimony taken at the Appeals Hearing on October 10, 2019; the Appeal is denied and the Landmark’s Decision is Affirmed.

The Appeals Authority is mandated to uphold the decision below unless it is not supported by substantial evidence or violates a law, statute or ordinance in effect at the time the decision was made. Olympus has the burden to prove that the decision was incorrect and also to marshal the evidence in support of the decision below.

This case arises out of a development that was granted a Certificate of Appropriateness pursuant to Salt Lake City process on February 26, 2018. Thereafter, the original developer sold the project to Olympus who subsequently made changes to the project. The modifications impacted the approved design on which the Certificate was based, including changes to the windows, doors and building materials. Olympus indicated that the changes were made by the Contractor without approval and acknowledged that the project was now outside the scope of what had been approved.

Olympus then sought approval from Landmarks for the modified project. Staff, in a written report and a presentation to the Commission recommended the changes be partially approved and partially denied. Based on the staff report, Landmarks voted unanimously to approve changes to the garage door materials, the front and back doorway detail on the ground floor of each unit and all other modifications. All other changes were denied including changes to the configuration of the windows on the south, east and west facades, the balcony doors and materials on the south façade and balcony doors and door materials on the east façade of the third story of each unit. There is no dispute that the required changes will result in a substantial financial outlay by Olympus.

Olympus makes three arguments in support of overturning the Landmarks Decision. First, Olympus argues that refusing a Certificate of Appropriateness will create legally forbidden waste and that Landmarks was insufficiently instructed as to the law. Olympus also claims that Landmarks improperly considered color and the risk of creating precedent when making their decision.

In making its waste argument, Olympus misrepresents the law, relying on *Western Land Equities v. City of Logan* in support of the proposition that any amount of waste requires an instruction that Landmarks consider the existence of waste in itself as reason to grant a Certificate of Appropriateness. Olympus claims that the lack of such an instruction constitutes error.

Rather than finding that waste is cause for allowing an otherwise unapproved project to go forward, *Western Lands* considered the existence of potential waste as a basis for adopting a rule that a project be governed by existing or pending zoning rules and that after the fact unknown changes in the law cannot be applied to already approved projects. The Court found that to allow a project to go forward and then stopped based on a change in the law would create unanticipated waste.

While there is no question that the Landmark decision will create some waste, given that it will require Olympus to redo some work completed in violation of the original certificate, nothing in *Western Lands* indicates that a project constructed contrary to approval is exempt from the zoning code because of the cost of correction. *Western Lands* was limited to the question of retroactive application of the zoning code and thus has no application to the Olympus project. “Since the decision of the court below was based on a finding that the plaintiffs did have such a vested right, and not on the arbitrariness or unreasonableness of the commission’s action, we deal only with the issue of whether the amendment to the zoning ordinance enacted by the city could be retroactively applied to plaintiffs’ application for subdivision approval.” No rule of the Utah appellate courts allows waste to be a factor in considering whether a project should go forward in such circumstances.

As to the issues relating to color, window material and precedent, these matters were raised by members of the Land Use Commission as part of its discussion of the Olympus application. Nonetheless, when a Motion was finally made, the Commission looked to the staff report, which focused on those changes that were not consistent with the Design Guidelines, showing a side by side comparison of the approved project, the modifications and the guidelines. The staff report recommended some part of the project be approved while others required correction. Moreover, Olympus fails to show how the discussion of these issues played a role in the specific approvals and denials reflected in the Landmarks Decision.

Based on the foregoing, the appeal is denied and the decision of Landmarks is upheld.

DATED this 22<sup>nd</sup> day of October, 2019

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