Salt Lake City Land Use Appeals Hearing Officer
Appeals Decision
Stephanie Poulos-Arrasi
PLNAPP2020-00725
(Appealing Administrative Interpretation)
December 22, 2020

This is an appeal by Stephanie Poulos-Arrasi ("Appellant") of an administrative interpretation by the Salt Lake City Planning Department regarding whether the property located at 1782 South 1600 East (Tax ID: 16-16-328-024-0000) (the "Property") is a legal complying lot.

Ruling

The decision here is that the administrative decision relating to the Property not meeting the requirements to be considered as a legal complying lot is *upheld* because I find that the City's interpretation of how a legal complying lot is formed and identified to be correct, with no additional evidence provided to show otherwise with respect to the Property.

History and Procedures

The Appellant petitioned the Salt Lake City Planning Staff to make an administrative interpretation as to whether the Property was a legal complying parcel with the right to build a single-family home upon it. On September 9, 2020, City Senior Planner, Kelsey Lindquist issued the administrative decision which determined that the Property was not a legal buildable lot (the "Administrative Interpretation") based on a previous Board of Adjustment decision respecting the same Property on the same question in 1999 ("1999 BofA Decision"). The appeal was timely filed on September 18, 2020.

A public hearing on this matter was held before the Appeals Hearing Officer on Wednesday, December 10, 2020 (the "Hearing"). The Appellant appeared along with Mr. J. Michael Coombs, the Appellant's attorney. Appearing on behalf of the City were Kelsey Lindquist, Senior Planner with the City, and Paul Nielsen, a Senior City Attorney. Members of the public also weighed in on this matter. An extended discussion, including the identification and review of some of the evidence in the record, was conducted at the Hearing.

Standard of Review

Utah law grants to municipalities the authority to designate the standard of review for appeals of land use authority decisions. Utah law provides that "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." (*Utah Code Annotated* §10-9a-707, (1) and (4)). Salt Lake City ordinance provides that the standard of review for an appeal shall be *de novo*, which means that "[t[he 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." (Salt Lake City Ordinance, Section 21A.16.030 E.)

The Appellant identified essentially two issues as reasons for claiming that the City Planner's interpretation decision was in error, which are addressed as follows:

Issue A: Issue Preclusion and *Res Judicata*

The Appellant first takes issue with the Administrative Interpretation statement that "[t]his decision [1999 BofA Decision] . . . cannot be overturned or amended through the administrative interpretation process." The Appellant argues that the doctrine of *Res Judicata* or issue preclusion does not preclude a re-visitation of the 1999 BofA Decision since the Appellant does not have privity with the party of the 1999 BofA Decision, based on the four requirements for issue preclusion identified by the Utah Supreme Court in the case of Collins v. Sandy City Board of Adjustment, 2002 UT 77, 52 P.3d 1267, 1269-70, 2002 Utah LEXIS 103 (UT Sup. Ct. 2002), which is liberally cited by the Appellant. The City does not dispute this claim and I believe that the Appellant's argument on this point is persuasive.

However, while I agree with Appellant that she has "every right to challenge the 1999 BofA Decision", I am unpersuaded that I, in my role as an appeals hearing officer for Salt Lake City, whose authority is equal to or similar to that of the Board of Adjustment, can necessarily overturn a decision of the Board of Adjustment respecting the same issue on the same property. The Appellant has failed through the appeal and the Hearing to provide any additional evidence that an appeals hearing officer can overturn the 1999 BofA Decision, nor that the 1999 BofA Decision was wrongly decided. I have also been unable to identify anything in Salt Lake City Code that grants me as an appeals hearing officer the authority to overturn a decision of a body or individual that is equal in authority to me. If such were not the case, it could wreck havoc on the rule of law and order in the decisions of appeals hearing officers for the City. These circumstances would appropriately merit the authority of the court system to decide this matter.

Furthermore, the Appellant's fairness arguments are not persuasive given that the Appellant acknowledges that she received notice because of the fact that the abstract of the 1999 BofA Decision was recorded on the title of the Property.[1] Although an address was incorrectly included on the recorded document, it still was recorded against the title of the Property correctly and thus would put any buyer of the Property on notice that the Property might not be a buildable lot. Thus, Buyer bought the Property with knowledge (or at least imputed knowledge) that the City did not consider the Property to be a buildable lot.

Notwithstanding the foregoing which would seem to prevent me from overturning the 1999 BofA Decision, for purposes of adequately addressing the Appellant's arguments, I will continue my review and analysis of the issues raised on appeal.

Issue B: Whether the 1999 BofA Decision and Administrative Interpretation were "legally incorrect"

[1] See page 5 of Appellant's appeal brief.

The Appellant through her counsel's brief raised five issues under the broader issue of claiming that the Administrative Interpretation was legally incorrect.

Sub-issue #1

Appellant argues that the Property "should be deemed 'legally existing' or 'in legal existence' because it is a 'fully conforming lot' under today's zoning laws. A regulatory scheme that fails to allow this is unreasonable, outdated and fails to serve a legitimate governmental purpose. The City properly points out that any claim that the lot complies with "current" SR-3 zoning and a "current Flag Lot rule" is nonsensical, given that the Property has not been re-zoned to SR-3, nor does it meet any requirements of the Flag Lot rule of the City.

While I recognize that the subdivision rules and regulations throughout much of the 20th century in the City may not have been uniformly nor apparently completely followed to the letter making it difficult to discern what regulations might have been used in the establishment of the boundaries making up the Property, the issue of the lot being created through the subdivision process still remains. The Appellant did not dispute in her brief nor in the Hearing that the lot was ever subject to a subdivision amendment and the lot created through the subdivision process. As the City Attorney articulates in his brief, "whatever division of land may have occurred . . . no plat amendment was filed and whatever transaction(s) created the current configuration of the Property did not comply with subdivision requirements in effect at that time."[2] While it is unfortunate that the process was not properly followed, and that over time, people may have assumed it was a legal lot, but it still does not magically make the Property a legal lot with rights to build on it.

Sub-issue #2

The Appellant next claims that the Administrative Decision "violates City interpretive precedent and is otherwise unconstitutional." The Appellant's counsel in his appeal brief cites a 2018 City decision of administrative interpretation that he claims provides precedent to decide in favor of the Appellant. The City Attorney argues persuasively that the 2018 decision was decided with important fact distinctions, the least of which is that the lot was a legally subdivided and created lot, which was not at issue. Furthermore, I am unaware of any requirement or law that the City must follow "precedent" of past decisions whose facts are distinctly different from those of the Appellant.

Sub-issue #3

I am grouping the final issues raised by the Appellant into a single discussion since they are all related to the lot merger doctrine.

While it does appear that the 1999 BofA Decision relied upon the lot merger doctrine, which is also acknowledged by the City Attorney in his brief, the reliance on this doctrine by the Board of

[2] See City Attorney Brief, dated December 10, 2020, by Paul Nielson, page 2-3.

Adjustment does not automatically render their decision as erroneous or illegal. The Appellant's counsel points out that there has been no affirmative adoption officially of any lot merger doctrine in Utah, the City Attorney makes it clear that there is also nothing in Utah law that prohibits its application. While the Appellant's counsel attacks the applicability of the lot merger doctrine, the City Attorney quotes liberally from the Murr v. Wisconsin discussion of the United States Supreme Court, 137 S.Ct. 1933 (2017). In this case, the Supreme Court confirmed that the lot merger doctrine does not necessarily constitute a taking and that "[t]he absence of a special relationship between the holdings may counsel against consideration of all the holdings as a single parcel, making the restrictive law susceptible to a takings challenge. On the other hand, if the landowner's other property is adjacent to the small lot, the market value of the properties may well increase if their combination enables the expansion of a structure, or if development restraints for one part of the parcel protect the unobstructed skyline views of another part. That, in turn, may counsel in favor of treatment as a single parcel and may reveal the weakness of a regulatory takings challenge to the law."[3] This language strongly suggests and the lot merger doctrine could be properly applied where there is a relationship between the two parcels. Thus, when the Board of Adjustment issued its decision potentially based upon the lot merger doctrine, under current law, the Appellant will have a very difficult time arguing that the Board of Adjustment illegally relied upon the lot merger doctrine.

Conclusion

Notwithstanding the 1999 BofA Decision and whether it can be relied upon with its apparent reliance upon some form of lot merger doctrine, the issue of the lack of a legally created lot with rights to develop remains. Unfortunately, the Appellant mistakenly ignored a recorded document alerting her to the fact that it was a non-buildable lot and is now attempting to make up for that mistake by attacking the 1999 BofA Decision and the Administrative Decision. I do not find that she was successful in attacking either decision. Furthermore, I am not sure that I even have the authority to overturn a 1999 BofA Decision because the Board of Adjustment is a body that had the same authority as I currently have as an appeals hearing officer.

Nevertheless, based upon the materials in the City's Staff Report, the materials provided by the Appellant, other materials provided by the City, combined with the testimony presented in the Hearing, I find that the conclusion in the Administrative Interpretation asserting that the Property does not meet the requirements of a legal buildable lot is consistent with City Code and Utah law.

Matthew T. Wirthlin, Appeals Hearing Officer

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[3] Murr at 1946.