

ADMINISTRATIVE HEARING OF A LAND USE APPEAL

(Case No. **PLNAPP2020-00440**)

(Appealing Petition No. PLNHLC2020-00068)

August 13, 2020

Appellant: Jeff Garbett

Decision-making entity: Salt Lake City Historic Landmark Commission

Address
Related to Appeal: 58 East Hillside Avenue

Request: Appealing the historic landmark commission's denial of a certificate of appropriateness to demolish a single-family structure.

Brief Prepared by: Paul C. Nielson, Senior City Attorney

Land Use Appeals Hearing Officer's Jurisdiction and Authority

The appeals hearing officer, established pursuant to Section 21A.06.040 of the *Salt Lake City Code*, is the city's designated land use appeal authority on appeals of historic landmark commission decisions.

Standard of Review for Appeals to the Historic Preservation Appeal Authority

In accordance with Section 21A.16.030.A of the *Salt Lake City Code*, an appeal of the historic landmark commission "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." It is the appellant's burden to prove that the decision made by the land use authority was erroneous. (Sec. 21A.16.030.F). Moreover, it is the appellant's responsibility to marshal the evidence in

this appeal. Carlsen v. City of Smithfield, 287 P.3d 440 (2012), State v. Nielsen, 326 P.3d 645 (Utah, 2014), and Hodgson v. Farmington City, 334 P.3d 484 (Utah App., 2014).

“The Appeals Hearing Officer or Historic Preservation Appeal Authority shall review the decision based upon applicable standards and shall determine its correctness.” (Sec. 21A.16.030.E.2.b). “The Appeals Hearing Officer or Historic Preservation Appeal Authority 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.” (Sec. 21A.16.030.E.2.c).

This case deals with application of Section 21A.34.020.K (Standards for Certificate of Appropriateness for Demolition of a Contributing Principal Building in an H Historic Preservation Overlay District) of the *Salt Lake City Code*. Video of the commission’s May 7, 2020 public meeting is part of the record of this matter and is found at <https://www.youtube.com/watch?v=FJx2T3r68Xg> (3:10:25 to 4:10:27).

Background

This matter was heard by the historic landmark commission on May 7, 2020 on a petition by Jeff Garbett (“Appellant” or “Applicant”) for a certificate of appropriateness to demolish a single-family dwelling located at 58 East Hillside Avenue (the “Property”).

Planning division staff prepared a report dated April 30, 2020 for the historic landmark commission’s consideration of the subject petition in which staff determined that the proposal to demolish the contributing structure on the Property did not meet the standards for approving a certificate of appropriateness for demolition of a contributing principal building in the H Historic Preservation Overlay District. (See Planning Division Staff Report Dated April 30, 2020). Appellant submitted materials that were provided in the staff report.

At its May 7, 2020 meeting (held electronically via Cisco Webex due to the COVID-19 pandemic as authorized by law), the historic landmark commission heard presentations from planning division staff, Applicant, and received testimony from members of the public. Following these presentations and testimony, the commission voted to deny the application based on the findings and analysis presented by planning division staff, as those findings were presented in the April 30, 2020 staff report and all other information and testimony provided to the commission. (See Video of May 7, 2020 Historic Landmark Commission Meeting at 4:08:36 to 4:10:08).

On June 5, 2020, Appellant filed an appeal application form along with a document that appears to include arguments in favor of demolition but does not specifically identify any error made by the historic landmark commission.

Discussion

Appellant's appeal document appears to include much of the information he provided in a document he submitted to the historic landmark commission along with highlighted text that seems to be the arguments presented in this appeal or responses to the applicable standards. For purposes of this appeal, the city will assume that the highlighted text constitutes Appellant's arguments insofar as they address some of the standards that the historic landmark commission determined were not met.

Appellant's appeal appears to center on the argument that the single-family dwelling on the Property has not retained its "historic integrity". In fact, that argument pops up a few times in the appeal document. Appellant initially asserts that argument where he states:

The Staff report fails to give site specific, and structure specific evidence of Historical integrity. In order to have or keep historical integrity, the criteria demands many if not most of the following 7 guidelines be met. It is not sufficient for an individual structure to have or keep historical integrity merely by its location within a historical overlay district.

(Appellant's Appeal Document, p. 2). That assertion ignores planning staff's discussion of Key Issues on page 4 of the staff report--specifically, Issue 2--as well as the analysis and findings in Attachment G to the staff report. Both the discussion in the text identified as "Issue 2" and the analysis of the standard set forth in Subsection 21A.34.020.K.1.a of the *Salt Lake City Code* specifically address the physical integrity of the subject single-family dwelling, identifying its physical properties and noting that, while the structure does need repairs, its physical integrity is retained. It should also be noted that the standard concerns "physical integrity" not "historical integrity" as described by Appellant, but the city assumes that Appellant is referring to essentially the same principle.

Appellant claims a few times that the structure has lost its "historical integrity", but fails to provide any factual support for that claim. Additionally, Appellant's appeal document includes a significant amount of personal narrative. What Appellant's submission does not include is any specific assertion of an error committed by the Salt Lake City Historic Landmark Commission or any discussion of how the commission's decision to deny Appellant's petition was arbitrary, capricious, or illegal. As mentioned above, it is Appellant's burden to prove that the historic landmark commission erred in its application of the applicable standards in light of the facts presented in this matter. Appellant has not met that burden nor has he provided the appeals hearing officer any basis under the law to undo the commission's decision. Instead of pointing to any error made by the commission, Appellant seems to have instead offered his own opinions and conclusions, along with a handful of explanations regarding the Property's condition. Simply

put, Appellant has provided no basis for the hearing officer to grant the appeal, and the law does not allow the hearing officer to do so if Appellant has not met his burden.

CONCLUSION

For all of the reasons stated above, Appellant's arguments must be rejected and the historic landmark commission's decision be upheld.