

SALT LAKE CITY LAND USE APPEALS HEARING DECISION
Case No. PLNHLC2019-00860
Property Address 33 South 600 East, Salt Lake City, Utah
APPEAL FROM A DECISION BY THE HISTORIC LANDMARK COMMISSION
APPELLANT: PHILIP G. MCCARTHY, LLC
May 13, 2020

On April 30, 2020, this matter came before the Salt Lake City Land Use Appeals Authority. A hearing was held, over WebEx, a video conferencing platform which allowed for the participation of all parties. Philip G. McCarthy, LLC (“McCarthy”), the appellant was present and represented by counsel; Gary Sackett, Salt Lake City was present, and represented by Samantha Slark, and the property owner; The Masonic Temple Association was also present; represented by counsel Brian Rossander. Members of the public were present and able to conference in to view and listen to the proceedings.

The appeal arises out of a decision by the Landmark Commission (“Landmarks”) to approve a certificate of appropriateness for new construction in a historic district. The project, a 125 unit multi-family structure is sited to be constructed on property currently owned by The Masonic Temple Association and directly abutting property owned by McCarthy; the Appellant. McCarthy’s property is known as the Walker-McCarthy Mansion (the Mansion). Following a Work Session and Public Hearing, Landmarks voted unanimously to approve the certificate.

McCarthy appeals on two grounds. First, that the notice provided did not comply with the requirements of Salt Lake City ordinance and second, that Landmarks failed to appropriately consider and apply the City’s design rules when assessing the project.

On appeal, McCarthy carries the burden of proving, based on the record below, that the decision of Landmarks is not supported by substantial evidence in the record or that it violates a law, statute or ordinance in effect when the decision is made. Because the record supports Landmarks process and findings; the decision below is affirmed.

I. NOTICING COMPLIED WITH CITY ORDINANCE

McCarthy argues that the City failed to provide the notice required by Salt Lake City Ordinance and asserts that the development should have been treated as a “major public facility or structure or as a planned development” pursuant to §2.60.050(C), with required notice to Community Councils and surrounding neighbors. This project does not fit within those categories and new construction in a historic district is not subject to the noticing requirements sought by Appellant. And the size of the project alone does not create an extra-legal noticing obligation as McCarthy suggests.

Moreover, the City did give notice as evidenced by the staff report prepared for Landmarks and disseminated prior to the public hearing on the project. Contrary to McCarthy’s argument, this is sufficient evidence as to how the project and proceedings were noticed. The record at a

land use hearing is not held to evidentiary standards. Witnesses are not sworn in and documents are not authenticated.

McCarthy has failed to show any error in noticing of the project.

II. LANDMARKS PROPERLY CONSIDERED THE STANDARDS AND GUIDELINES APPLICABLE TO THE PROJECT

On January 16, 2020, Landmarks held a public hearing to consider and vote on the Masonic Temple project. Prior to the hearing, Salt Lake City held an open house, Landmarks held a work session, and the Commission received a staff report which included analysis of the standards and guidelines governing the project, along with a narrative assembled by the applicant including images illustrating the project and how it related to the surrounding neighborhood; including the Mansion. The record was supplemented by a site visit by two members of the Commission. Landmarks also received input in the form of public testimony from members of the Community. Philip G. McCarthy; the principal of McCarthy, LLC, was among those who testified at the hearing. Mr. McCarthy was given time beyond what was available to the general public and he testified that he believed the siting and mass of the project would be detrimental to the Walker-McCarthy Mansion, putting his concerns squarely before the Commission. Other individuals testified both in favor and against the project with many of those against testifying regarding the negative impact of the project on the South Temple historic landscape of which the Mansion is part.

McCarthy argues on appeal that the decision of Landmarks should be vacated and the matter remanded because of alleged failures by the Commission to properly apply the standards and design guidelines governing the project. The appellant has the burden of showing that the decision is contrary to the law or without support in the record. Salt Lake City Code §21A.16.030(E)(2)(c). Rather than acknowledge the breadth of evidence before Landmarks, McCarthy instead essentially insists that its own judgment be substituted for that of the Commission.

The record includes evidence as to each of the design elements to which McCarthy raises objections. Appellant's brief asserts, for example; "the project is not compatible with the historic setting and context." Yet this question was squarely before the Commission and subject to direct testimony. The same is true of the building height and its modulation and the massing and scale of the project. The relationship of the proposed structure to the Mansion was well documented in the staff and applicant materials. Pages 68-79 of the Staff Report included 3-D model views illustrating the manner in which the project would relate to surrounding properties. The issues raised by McCarthy were the very issues brought to the Commission's attention. The record provided substantial evidence from which the Commission could conclude the City's standards had been met.

McCarthy is correct that the presiding chair of the meeting incorrectly stated that access to light was beyond the scope of the Commission's authority. But as the Appellant's brief acknowledges, that erroneous information was corrected; making every member of the Commission distinctly aware that access to light was within their purview.

Finally, in moving to grant the Certificate of Appropriateness, the Commission cited the analysis and standards in the Staff Report, testimony and the proposal itself. Staff Report, page 25. This provides an evidentiary basis for the decision.

Given that the Appellant has failed to identify any error of law and the presence of substantial evidence in the record from which Landmarks could determine to grant the Certificate of Appropriateness, the appeal is denied.

DATED this 13th day of May, 2020

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